

**TITLE 10 AND TITLE 32,  
UNITED STATES CODE**



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# Title 10 and Title 32, United States Code

ENACTED DURING THE  
SECOND SESSION OF THE EIGHTY-FOURTH CONGRESS  
OF THE UNITED STATES OF AMERICA

*Begun and held at the City of Washington on  
Tuesday, January 3, 1956*

## An Act

*To revise, codify, and enact into law, title 10 of the United States Code, entitled "Armed Forces", and title 32 of the United States Code, entitled "National Guard".*

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That title 10 of the United States Code, entitled "Armed Forces", is revised, codified, and enacted into law, and may be cited as "Title 10, United States Code, § —", as follows:*

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## PART I. ORGANIZATION AND GENERAL MILITARY POWERS

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### CHAPTER 1.—DEFINITIONS

Sec.

#### 101. Definitions.

#### § 101. Definitions

In addition to the definitions in sections 1-5 of title 1, the following definitions apply in this title:

(1) "United States", in a geographic sense, means the States and the District of Columbia.

(2) "Territory" means Alaska, Hawaii, or any Territory organized after this title is enacted, so long as it remains a Territory.

(3) "Possessions" includes the Virgin Islands, the Canal Zone, Guam, American Samoa, and the guano islands, so long as they remain possessions, but does not include any Territory or Commonwealth.

(4) "Armed forces" means the Army, Navy, Air Force, Marine Corps, and Coast Guard.

(5) "Department", when used with respect to a military department, means the executive part of the department and all

field headquarters, forces, reserve components, installations, activities, and functions under the control or supervision of the Secretary of the department. When used with respect to the Department of Defense, it means the executive part of the department, including the executive parts of the military departments, and all field headquarters, forces, reserve components, installations, activities, and functions under the control or supervision of the Secretary of Defense, including those of the military departments.

(6) "Executive part of the department" means the executive part of the Department of Defense, Department of the Army, Department of the Navy, or Department of the Air Force, as the case may be, at the seat of government.

(7) "Military departments" means the Department of the Army, the Department of the Navy, and the Department of the Air Force.

(8) "Secretary concerned" means—

(A) the Secretary of the Army, with respect to matters concerning the Army;

(B) the Secretary of the Navy, with respect to matters concerning the Navy, the Marine Corps, and the Coast Guard when it is operating as a service in the Navy;

(C) the Secretary of the Air Force, with respect to matters concerning the Air Force; and

(D) the Secretary of the Treasury, with respect to matters concerning the Coast Guard when it is not operating as a service in the Navy.

(9) "National Guard" means the Army National Guard and the Air National Guard.

(10) "Army National Guard" means that part of the organized militia of the several States and Territories, Puerto Rico, the Canal Zone, and the District of Columbia, active and inactive, that—

(A) is a land force;

(B) is trained, and has its officers appointed, under the sixteenth clause of section 8, article I, of the Constitution;

(C) is organized, armed, and equipped wholly or partly at Federal expense; and

(D) is federally recognized.

(11) "Army National Guard of the United States" means the reserve component of the Army all of whose members are members of the Army National Guard.

(12) "Air National Guard" means that part of the organized militia of the several States and Territories, Puerto Rico, the Canal Zone, and the District of Columbia, active and inactive, that—

(A) is an air force;

(B) is trained, and has its officers appointed, under the sixteenth clause of section 8, article I, of the Constitution;

(C) is organized, armed, and equipped wholly or partly at Federal expense; and

(D) is federally recognized.

(13) "Air National Guard of the United States" means the reserve component of the Air Force all of whose members are members of the Air National Guard.

(14) "Officer" means commissioned or warrant officer.

(15) "Commissioned officer" includes a commissioned warrant officer.

(16) "Warrant officer" means a person who holds a commission or warrant in a warrant officer grade.

(17) "Enlisted member" means a person in an enlisted grade.

(18) "Grade" means a step or degree, in a graduated scale of office or military rank, that is established and designated as a grade by law or regulation.

(19) "Rank" means the order of precedence among members of the armed forces.

(20) "Rating" means the name (such as "boatswain's mate") prescribed for members of an armed force in an occupational field. "Rate" means the name (such as "chief boatswain's mate") prescribed for members in the same rating or other category who are in the same grade (such as chief petty officer or seaman apprentice).

(21) "Authorized strength" means the largest number of members authorized to be in an armed force, a component, a branch, a grade, or any other category of the armed forces.

(22) "Active duty" means full-time duty in the active military service of the United States. It includes duty on the active list, full-time training duty, annual training duty, and attendance, while in the active military service, at a school designated as a service school by law or by the Secretary of the military department concerned.

(23) "Active duty for a period of more than 30 days" means active duty under a call or order that does not specify a period of 30 days or less.

(24) "Active service" means service on active duty.

(26) "Supplies" includes material, equipment, and stores of all kinds.

(27) "Pay" includes basic pay, special pay, retainer pay, incentive pay, retired pay, and equivalent pay, but does not include allowances.

(28) "Shall" is used in an imperative sense.

(29) "May" is used in a permissive sense. The words "no person may . . ." mean that no person is required, authorized, or permitted to do the act prescribed.

(30) "Includes" means "includes but is not limited to".

(31) "Inactive-duty training" means—

(A) duty prescribed for Reserves by the Secretary concerned under section 301 of title 37 or any other provision of law; and

(B) special additional duties authorized for Reserves by an authority designated by the Secretary concerned and performed by them on a voluntary basis in connection with the prescribed training or maintenance activities of the units to which they are assigned.

It includes those duties when performed by Reserves in their status as members of the National Guard.

(32) "Spouse" means husband or wife, as the case may be.

(33) "Regular", with respect to an enlistment, appointment, grade, or office, means enlistment, appointment, grade, or office in a regular component of an armed force.

(34) "Reserve", with respect to an enlistment, appointment, grade, or office, means enlistment, appointment, grade, or office held as a Reserve of an armed force.

### CHAPTER 3.—GENERAL POWERS

Sec.

121. Regulations.

#### § 121. Regulations

The President may prescribe regulations to carry out his functions, powers, and duties under this title.

### CHAPTER 5.—JOINT CHIEFS OF STAFF

Sec.

141. Composition; functions.

142. Chairman.

143. Joint Staff.

#### § 141. Composition; functions

(a) There are in the Department of Defense the Joint Chiefs of Staff consisting of—

- (1) a Chairman, who has no vote;
- (2) the Chief of Staff of the Army;
- (3) the Chief of Naval Operations; and
- (4) the Chief of Staff of the Air Force.

(b) The Joint Chiefs of Staff are the principal military advisers to the President, the National Security Council, and the Secretary of Defense.

(c) The Commandant of the Marine Corps shall indicate to the Chairman any matter scheduled for consideration by the Joint Chiefs that directly concerns the Marine Corps. Unless, upon request of the Chairman for a determination, the Secretary of Defense determines that such a matter does not concern the Marine Corps, the Commandant shall meet with the Joint Chiefs of Staff when that matter is under consideration. While the matter is under consideration and with respect to it, the Commandant has co-equal status with the members of the Joint Chiefs of Staff.

(d) Subject to the authority and direction of the President and the Secretary of Defense, the Joint Chiefs of Staff shall—

- (1) prepare strategic plans and provide for the strategic direction of the armed forces;
- (2) prepare joint logistic plans and assign logistic responsibilities to the armed forces in accordance with those plans;
- (3) establish unified commands in strategic areas;
- (4) review the major material and personnel requirements of the armed forces in accordance with strategic and logistic plans;
- (5) formulate policies for the joint training of the armed forces;



(6) formulate policies for coordinating the military education of members of the armed forces;

(7) provide for representation of the United States on the Military Staff Committee of the United Nations in accordance with the Charter of the United Nations; and

(8) perform such other duties as the President or the Secretary of Defense may prescribe.

#### § 142. Chairman

(a) The Chairman of the Joint Chiefs of Staff shall be appointed by the President, by and with the advice and consent of the Senate, from the officers of the regular components of the armed forces. He serves at the pleasure of the President for a term of two years, and may be reappointed in the same manner for one additional term. However, in time of war declared by Congress there is no limit on the number of reappointments.

(b) In addition to his other duties as a member of the Joint Chiefs of Staff, the Chairman shall, subject to the authority and direction of the President and the Secretary of Defense—

(1) preside over the Joint Chiefs of Staff;

(2) provide agenda for the meetings of the Joint Chiefs of Staff and assist them in carrying on their business as promptly as practicable; and

(3) inform the Secretary of Defense, and, when the President or the Secretary of Defense considers it appropriate, the President, of those issues upon which the Joint Chiefs of Staff have not agreed.

(c) While holding office, the Chairman outranks all other officers of the armed forces. However, he may not exercise military command over the Joint Chiefs of Staff or any of the armed forces.

(d) The Chairman is entitled to the pay and allowances provided by law for the Chief of Staff of the Army.

#### § 143. Joint Staff

(a) There is under the Joint Chiefs of Staff a Joint Staff consisting of not more than 210 officers selected by the Joint Chiefs of Staff with the approval of the Chairman. The Joint Staff shall be selected in approximately equal numbers from—

(1) the Army;

(2) the Navy and the Marine Corps; and

(3) the Air Force.

The tenure of the members of the Joint Staff is subject to the approval of the Chairman of the Joint Chiefs of Staff.

(b) The Joint Chiefs of Staff, with the approval of the Secretary of Defense, shall select the Director of the Joint Staff. The tenure of the Director is subject to the Secretary's approval. The Director must be an officer junior in grade to each member of the Joint Chiefs of Staff.

(c) The Joint Staff, operating under the Director, shall perform such duties as the Joint Chiefs of Staff direct. The Chairman of the Joint Chiefs of Staff manages the Joint Staff and its director.

## CHAPTER 7.—BOARDS, COUNCILS, AND COMMITTEES

Sec.

171. Armed Forces Policy Council.

172. Ammunition storage board.

173. Advisory personnel.

174. Advisory personnel: research and development.

175. Reserve Forces Policy Board.

### § 171. Armed Forces Policy Council

(a) There is in the Department of Defense an Armed Forces Policy Council consisting of—

- (1) the Secretary of Defense, as Chairman, with the power of decision;
- (2) the Deputy Secretary of Defense;
- (3) the Secretary of the Army;
- (4) the Secretary of the Navy;
- (5) the Secretary of the Air Force;
- (6) the Chairman of the Joint Chiefs of Staff;
- (7) the Chief of Staff of the Army;
- (8) the Chief of Naval Operations; and
- (9) the Chief of Staff of the Air Force.

(b) The Armed Forces Policy Council shall advise the Secretary of Defense on matters of broad policy relating to the armed forces and shall consider and report on such other matters as the Secretary of Defense may direct.

### § 172. Ammunition storage board

(a) The Secretaries of the military departments, acting through a joint board of officers selected by them, shall keep informed on stored supplies of ammunition and components thereof for use of the Army, Navy, Air Force, and Marine Corps, with particular regard to keeping those supplies properly dispersed and stored and to preventing hazardous conditions from arising to endanger life and property inside or outside of storage reservations.

(b) The board shall confer with and advise the Secretaries of the military departments in carrying out the recommendations in House Document No. 199 of the Seventieth Congress.

### § 173. Advisory personnel

(a) The Secretary of Defense may establish such advisory committees and employ such part-time advisers as he considers necessary for the performance of his functions and those of the agencies under his control.

(b) A person who serves as a member of a committee may not be paid for that service while holding another position or office under the United States for which he receives compensation. Other members and part-time advisers may serve without compensation or may be paid not more than \$50 for each day of service, as the Secretary determines.

(c) Sections 281, 283, and 284 of title 18 do not apply to a person because of his service on a committee, or as a part-time adviser, under subsection (a), unless he performs an act which is unlawful under one of those sections and which relates to a matter directly involving a

department or agency which he is advising or to a matter in which that department or agency is directly interested.

**§ 174. Advisory personnel : research and development**

(a) The Secretary of each military department may establish such advisory committees and panels as are necessary for the research and development activities of his department and may employ such part-time advisers as he considers necessary to carry out those activities.

(b) A person who serves as a member of such a committee or panel may not be paid for that service while holding another position or office under the United States for which he receives compensation. Other members and part-time advisers may serve without compensation or may be paid not more than \$50 for each day of service, as the Secretary concerned determines.

(c) The Secretary concerned may delegate any authority under this section to—

- (1) the Under Secretary of his department;
- (2) an Assistant Secretary of his department; or
- (3) the chief, and one assistant to the chief, of any technical service, bureau, or office.

**§ 175. Reserve Forces Policy Board**

(a) There is in the Office of the Secretary of Defense a Reserve Forces Policy Board consisting of—

- (1) a civilian chairman appointed by the Secretary of Defense;
- (2) the Secretary, the Under Secretary, or an Assistant Secretary designated under section 264 (b) of this title, of each of the military departments;
- (3) an officer of the Regular Army designated by the Secretary of the Army;
- (4) an officer of the Regular Navy or Regular Marine Corps designated by the Secretary of the Navy;
- (5) an officer of the Regular Air Force designated by the Secretary of the Air Force;
- (6) four reserve officers designated by the Secretary of Defense upon the recommendation of the Secretary of the Army, two of whom must be members of the Army National Guard of the United States, and two of whom must be members of the Army Reserve;
- (7) four reserve officers designated by the Secretary of Defense upon the recommendation of the Secretary of the Navy, two of whom must be members of the Naval Reserve, and two of whom must be members of the Marine Corps Reserve;
- (8) four reserve officers designated by the Secretary of Defense upon the recommendation of the Secretary of the Air Force, two of whom must be members of the Air National Guard of the United States, and two of whom must be members of the Air Force Reserve; and
- (9) a reserve officer of the Army, Navy, Air Force, or Marine Corps who is a general officer or flag officer designated by the Chairman of the Board with the approval of the Secretary of Defense, and who serves without vote as military adviser to the Chairman and as executive officer of the Board.

(b) Whenever the Coast Guard is not operating as a service in the Navy, the Secretary of the Treasury may designate an officer of the Regular Coast Guard or the Coast Guard Reserve to serve without vote as a member of the Board.

(c) The Board, acting through the Assistant Secretary of Defense designated under section 264 (a) of this title, is the principal policy adviser to the Secretary of Defense on matters relating to the reserve components.

(d) This section does not affect the committees on reserve policies prescribed by section 3033 or 8033 of this title.

(e) A member of a committee under section 3033 or 8033 of this title may, if otherwise eligible, be a member of the Reserve Forces Policy Board.

## CHAPTER 9.—REGULAR COMPONENTS

[No present sections]

## CHAPTER 11.—RESERVE COMPONENTS

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### § 261. Reserve components named

(a) The reserve components of the armed forces are:

(1) The Army National Guard of the United States.

(2) The Army Reserve.

(3) The Naval Reserve.

(4) The Marine Corps Reserve.

(5) The Air National Guard of the United States.

(6) The Air Force Reserve.

(7) The Coast Guard Reserve.

(b) Except as otherwise provided in this title, no person may be a member of more than one reserve component at the same time.

### § 262. Purpose

The purpose of the reserve components is to provide trained units and qualified persons available for active duty in the armed forces, in time of war or national emergency and at such other times as the national security requires, to fill the needs of the armed forces whenever, during, and after the period needed to procure and train additional units and qualified persons to achieve the planned mobiliza-



tion, more units and persons are needed than are in the regular components.

### **§ 263. Basic policy for order into Federal service**

Whenever Congress determines that more units and organizations are needed for the national security than are in the regular components of the ground and air forces, the Army National Guard of the United States and the Air National Guard of the United States, or such parts of them as are needed, together with units of other reserve components necessary for a balanced force, shall be ordered to active duty and retained as long as so needed.

### **§ 264. Reserve affairs: responsibility for**

(a) The Secretary of Defense shall designate an Assistant Secretary of Defense to have, in addition to his other duties, principal responsibility for reserve affairs of the Department of Defense.

(b) In addition to his other duties, the Secretary concerned, or, as he may prescribe, the Under Secretary or an Assistant Secretary of his department, has the principal responsibility for supervising the activities of the reserve components under that department.

(c) The Secretary concerned shall designate a general or flag officer of each armed force under his jurisdiction to be directly responsible for reserve affairs to the Chief of Staff of the Army, the Chief of Naval Operations, the Chief of Staff of the Air Force, the Commandant of the Marine Corps, and the Commandant of the Coast Guard, as the case may be. This subsection does not affect the functions of the Chief of the National Guard Bureau.

### **§ 265. Policies and regulations: participation of reserve officers in preparation and administration**

Within such numbers and in such grades and assignments as the Secretary concerned may prescribe, each armed force shall have officers of its reserve components on active duty (other than for training) at the seat of government, and at headquarters responsible for reserve affairs, to participate in preparing and administering the policies and regulations affecting those reserve components. While so serving, such an officer is an additional number of any staff with which he is serving.

### **§ 266. Boards for appointment, promotion, and certain other purposes: composition**

(a) Each board convened for the appointment, promotion, demotion, involuntary release from active duty, discharge, or retirement of Reserves shall include an appropriate number of Reserves, as prescribed by the Secretary concerned under standards and policies prescribed by the Secretary of Defense.

(b) Each member of a board convened for the selection for promotion, or for the demotion or discharge, of Reserves must be senior in rank to the persons under consideration by that board. However, a member serving in a legal advisory capacity may be junior in rank to any person, other than a judge advocate or law specialist, being considered by that board; and a member serving in a medical advisory capacity may be junior in rank to any person, other than a medical officer, being considered by that board.

**§ 267. Ready Reserve; Standby Reserve; Retired Reserve: placement and status of members**

(a) There are in each armed force a Ready Reserve, a Standby Reserve, and a Retired Reserve. Each Reserve shall be placed in one of those categories.

(b) Reserves who are on the inactive status list of a reserve component, or who are assigned to the inactive Army National Guard or the inactive Air National Guard, are in an inactive status. Members in the Retired Reserve are in a retired status. All other Reserves are in an active status.

**§ 268. Ready Reserve**

The Ready Reserve consists of units or Reserves, or both, liable for active duty as provided in sections 672 and 673 of this title. The authorized strength of the Ready Reserve is 1,500,000.

**§ 269. Ready Reserve: placement in; transfer from**

(a) Each person required under law to serve in a reserve component shall, upon becoming a member, be placed in the Ready Reserve of his armed force for his prescribed term of service, unless he is eligible to transfer to the Standby Reserve under subsection (e).

(b) The units and members of the Army National Guard of the United States and of the Air National Guard of the United States are in the Ready Reserve of the Army and the Ready Reserve of the Air Force, respectively.

(c) All Reserves assigned to units organized to serve as units and designated as units in the Ready Reserve are in the Ready Reserve.

(d) Under such regulations as the Secretary concerned may prescribe, any qualified Reserve may, upon his request, be placed in the Ready Reserve.

(e) Except in time of war or of national emergency declared by Congress, a Reserve who is not on active duty, or who is on active duty for training, shall, upon his request, be transferred to the Standby Reserve for the rest of his term of service, if—

(1) he served on active duty (other than for training) in the armed forces for an aggregate of at least five years;

(2) he served on active duty (other than for training) in the armed forces for an aggregate of less than five years, but satisfactorily participated, as determined by the Secretary concerned, in an accredited training program in the Ready Reserve for a period which, when added to his period of active duty (other than for training), totals at least five years, or such shorter period as the Secretary concerned, with the approval of the Secretary of Defense in the case of a Secretary of a military department, may prescribe for satisfactory participation in an accredited training program designated by the Secretary concerned;

(3) he served on active duty (other than for training) in the armed forces for an aggregate of at least 12 months after December 6, 1941, and before September 3, 1945, and for an aggregate of at least 12 months after June 25, 1950; or

(4) he was a member of one or more reserve components for an aggregate of at least eight years after September 2, 1945.

This subsection does not apply to a member of the Ready Reserve while he is serving under an agreement to remain in the Ready Reserve for a stated period.

(f) Subject to subsection (g), a member in the Ready Reserve may be transferred to the Standby Reserve or, if he is qualified and so requests, to the Retired Reserve, under such regulations as the Secretary concerned, with the approval of the Secretary of Defense in the case of a Secretary of a military department, may prescribe.

(g) A member of the Army National Guard of the United States or the Air National Guard of the United States may be transferred to the Standby Reserve only with the consent of the governor or other appropriate authority of the State or Territory, Puerto Rico, the Canal Zone, or the District of Columbia, whichever is concerned.

### § 273. Standby Reserve: composition; inactive status list

(a) The Standby Reserve consists of those units or members, or both, of the reserve components, other than those in the Ready Reserve or Retired Reserve, who are liable for active duty only as provided in sections 672 and 674 of this title.

(b) An inactive status list shall be maintained in the Standby Reserve. Whenever an authority designated by the Secretary concerned considers that it is in the best interest of the armed force concerned, a member in the Standby Reserve who is not required to remain a Reserve, and who cannot participate in prescribed training, may, if qualified, be transferred to the inactive status list under regulations to be prescribed by the Secretary concerned. These regulations shall fix the conditions under which such a member is entitled to be returned to an active status.

(c) While in an inactive status, a Reserve is not eligible for pay or promotion.

### § 274. Retired Reserve

The Retired Reserve consists of Reserves—

- (1) who have been transferred to it upon their request;
- (2) who retain their status as Reserves; and
- (3) who are otherwise qualified.

### § 275. Personnel records

Each armed force shall maintain adequate and current personnel records of each member of its reserve components showing—

- (1) his physical condition;
- (2) his dependency status;
- (3) his military qualifications;
- (4) his civilian occupational skills;
- (5) his availability for service; and
- (6) such other information as the Secretary concerned may prescribe.

### § 276. Mobilization forces: maintenance

(a) Whenever units or members of the reserve components are ordered to active duty (other than for training) during a period of partial mobilization, the Secretary concerned shall continue to maintain mobilization forces by planning and budgeting for the continued

organization and training of the reserve components not mobilized, and make the fullest practicable use of the Federal facilities vacated by mobilized units, consistent with approved joint mobilization plans.

(b) In this section "partial mobilization" means the mobilization resulting from action by Congress or the President, under any law, to bring units of any reserve component, and members not assigned to units organized to serve as units, to active duty for a limited expansion of the active armed forces.

#### **§ 277. Regular and reserve components: discrimination prohibited**

Laws applying to both Regulars and Reserves shall be administered without discrimination—

- (1) among Regulars;
- (2) among Reserves; and
- (3) between Regulars and Reserves.

#### **§ 278. Dissemination of information**

The Secretary of Defense shall require the complete and current dissemination, to all Reserves and to the public, of information of interest to the reserve components.

#### **§ 280. Regulations**

Subject to standards, policies, and procedures prescribed by the Secretary of Defense, the Secretary of each military department shall prescribe such regulations as he considers necessary to carry out chapters 11, 35, 39, and 59, and sections 715, 1003, 1004, 1032, 1376, 2001, 2511, 3077, 3079, 3221, 3224, 3259, 3260, 3261, 3351, 3352, 3353, 3495, 3498, 3685, 3686, 5251, 5252, 5456, 5597, 6150, 6327, 6483, 7225, 7226, 7854, 8077, 8079, 8221, 8224, 8259, 8260, 8261, 8351, 8352, 8353, 8495, 8498, 8685, and 8686 of this title. The Secretary of the Treasury, with the concurrence of the Secretary of the Navy, shall prescribe such regulations as he considers necessary to carry out chapters 11, 35, 39, and 59, and sections 513, 715, 742, 1003, 1004, 1032, 1376, 2001, and 2511 of this title, so far as they relate to the Coast Guard, except when the Coast Guard is operating as a service in the Navy. So far as practicable, regulations for all reserve components shall be uniform.

### **CHAPTER 13.—THE MILITIA**

Sec.

311. Militia: composition and classes.

312. Militia duty: exemptions.

#### **§ 311. Militia: composition and classes**

(a) The militia of the United States consists of all able-bodied males at least 17 years of age and, except as provided in section 313 of title 32, under 45 years of age who are, or who have made a declaration of intention to become, citizens of the United States.

(b) The classes of the militia are—

(1) the organized militia, which consists of the National Guard and the Naval Militia; and

(2) the unorganized militia, which consists of the members of the militia who are not members of the National Guard or the Naval Militia.



### § 312. Militia duty: exemptions

(a) The following persons are exempt from militia duty:

- (1) The Vice President.
- (2) The judicial and executive officers of the United States, the several States and Territories, Puerto Rico, and the Canal Zone.
- (3) Members of the armed forces, except members who are not on active duty.
- (4) Customhouse clerks.
- (5) Persons employed by the United States in the transmission of mail.
- (6) Workmen employed in armories, arsenals, and naval ship-yards of the United States.
- (7) Pilots on navigable waters.
- (8) Mariners in the sea service of a citizen of, or a merchant in, the United States.

(b) A person who claims exemption because of religious belief is exempt from militia duty in a combatant capacity, if the conscientious holding of that belief is established under such regulations as the President may prescribe. However, such a person is not exempt from militia duty that the President determines to be noncombatant.

## CHAPTER 15.—INSURRECTION

Sec.

331. Federal aid for State governments.
332. Use of militia and armed forces to enforce Federal authority.
333. Interference with State and Federal law.
334. Proclamation to disperse.

### § 331. Federal aid for State governments

Whenever there is an insurrection in any State against its government, the President may, upon the request of its legislature or of its governor if the legislature cannot be convened, call into Federal service such of the militia of the other States, in the number requested by that State, and use such of the armed forces, as he considers necessary to suppress the insurrection.

### § 332. Use of militia and armed forces to enforce Federal authority

Whenever the President considers that unlawful obstructions, combinations, or assemblages, or rebellion against the authority of the United States, make it impracticable to enforce the laws of the United States in any State or Territory by the ordinary course of judicial proceedings, he may call into Federal service such of the militia of any State, and use such of the armed forces, as he considers necessary to enforce those laws or to suppress the rebellion.

### § 333. Interference with State and Federal law

The President, by using the militia or the armed forces, or both, or by any other means, shall take such measures as he considers necessary to suppress, in a State, any insurrection, domestic violence, unlawful combination, or conspiracy, if it—

- (1) so hinders the execution of the laws of that State, and of the United States within the State, that any part or class of its

people is deprived of a right, privilege, immunity, or protection named in the Constitution and secured by law, and the constituted authorities of that State are unable, fail, or refuse to protect that right, privilege, or immunity, or to give that protection; or

(2) opposes or obstructs the execution of the laws of the United States or impedes the course of justice under those laws.

In any situation covered by clause (1), the State shall be considered to have denied the equal protection of the laws secured by the Constitution.

### § 334. Proclamation to disperse

Whenever the President considers it necessary to use the militia or the armed forces under this chapter, he shall, by proclamation, immediately order the insurgents to disperse and retire peaceably to their abodes within a limited time.

## CHAPTER 17.—ARMING OF AMERICAN VESSELS

Sec.

351. During war or threat to national security.

### § 351. During war or threat to national security

(a) The President, through any agency of the Department of Defense designated by him, may arm, have armed, or allow to be armed, any watercraft or aircraft that is capable of being used as a means of transportation on, over, or under water, and is documented, registered, or licensed under the laws of the United States.

(b) This section applies during a war and at any other time when the President determines that the security of the United States is threatened by the application, or the imminent danger of application, of physical force by any foreign government or agency against the United States, its citizens, the property of its citizens, or their commercial interests.

(c) Section 463 of title 22 does not apply to vessels armed under this section.

## PART II.—PERSONNEL

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## CHAPTER 31.—ENLISTMENTS

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### § 501. Enlistment oath: who may administer

Each person enlisting in an armed force shall take the following oath:

"I, \_\_\_\_\_, do solemnly swear (or affirm) that I will bear true faith and allegiance to the United States of America; that I will serve them honestly and faithfully against all their enemies whomsoever; and that I will obey the orders of the President of the United States and the orders of the officers appointed over me, according to regulations and the Uniform Code of Military Justice."

The oath may be taken before any commissioned officer of any armed force.

### § 510. Reserve components: qualifications

(a) To become an enlisted member of a reserve component a person must be enlisted as a Reserve of an armed force and subscribe to the oath prescribed by section 501 of this title, or be transferred to that component according to law. In addition, to become an enlisted member of the Army National Guard of the United States or the Air National Guard of the United States, he must meet the requirements of section 3261 or 8261 of this title.

(b) Except as otherwise provided by law, the Secretary concerned shall prescribe physical, mental, moral, professional, and age qualifications for the enlistment of persons as Reserves of the armed forces under his jurisdiction. However, no person may be enlisted as a Reserve unless—

(1) he is, or has made a declaration of intention to become, a citizen of the United States or of a possession thereof; or

(2) he has previously served in the armed forces or in the National Security Training Corps.

(c) Women may be enlisted as Reserves of the armed forces for service in the Army Reserve, Naval Reserve, Air Force Reserve, Marine Corps Reserve, and Coast Guard Reserve. Women are enlisted in the grades and ratings authorized for enlisted women of the regular component of the armed force concerned. Any female former enlisted member of an armed force may, if otherwise qualified, be enlisted as a Reserve of that armed force in the highest grade or rating in which she previously served satisfactorily on active duty (other than for training).

(d) A person who is otherwise qualified, but who has a physical defect that the Secretary concerned determines will not interfere with the performance of the duties to which that person may be assigned, may be enlisted as a Reserve of any armed force under the jurisdiction of that Secretary.

#### **§ 511. Reserve components: terms**

(a) Except as otherwise prescribed by law, enlistments as Reserves are for terms prescribed by the Secretary concerned. However, an enlistment that is in effect at the beginning of a war or of a national emergency declared by Congress, or entered into during such a war or emergency, and that would otherwise expire, continues in effect until the expiration of six months after the end of that war or emergency, whichever is later, unless sooner terminated by the Secretary concerned.

(b) In time of war or of national emergency declared by Congress the term of service of an enlisted member transferred to a reserve component according to law, that would otherwise expire, continues until the expiration of six months after the end of that war or emergency, whichever is later, unless sooner terminated by the Secretary concerned.

#### **§ 512. Reserve components: transfers**

(a) A person who would otherwise be required to be transferred to a reserve component under section 651 of this title or under sections 451-473 of title 50, appendix, is entitled, if he is qualified and accepted, to be enlisted in any armed force that he chooses and to participate in the programs authorized for that armed force. However, unless the two Secretaries concerned consent, he may not be enlisted as a Reserve of an armed force other than that from which he is transferred. All periods of his participation shall be credited against the total period of service required of him under section 651 of this title or under sections 451-473 of title 50, appendix. However, no period may be credited more than once.

(b) A person covered by subsection (a) shall perform the rest of his required term of service in the armed force in which he is so enlisted or in any other armed force in which he is later enlisted or appointed.

(c) This section does not change any term of service under an appointment, enlistment, or agreement, including an agreement made before or at the time when the member entered upon a program authorized by an armed force.

#### **§ 513. Reserve components: promotions**

The Secretary concerned shall establish an adequate and equitable system for promoting enlisted members of the reserve components under his jurisdiction who are in an active status. So far as practicable, each promotion system shall be similar to that for members of the regular component of the armed force concerned. Each promotion system shall provide for forced attrition to the extent necessary to maintain vigorous reserve forces, encourage necessary leadership, and provide a steady flow of promotions.



**§ 514. Bounties prohibited ; substitutes prohibited**

(a) No bounty may be paid to induce any person to enlist in an armed force. A clothing allowance or enlistment bonus authorized by law is not a bounty for the purposes of this subsection.

(b) No person liable for active duty in an armed force under this subtitle may furnish a substitute for that active duty. No person may be enlisted or appointed in an armed force as a substitute for another person.

**§ 515. Reenlistment after discharge as warrant officer**

A person who has been discharged from a regular component of an armed force under section 1165 or 1166 of this title may, upon his request and in the discretion of the Secretary concerned, be enlisted in that armed force in the grade prescribed by the Secretary. However, a person discharged under section 1165 of this title may not be enlisted in a grade lower than the grade that he held immediately before appointment as a warrant officer.

## **CHAPTER 33.—APPOINTMENTS IN REGULAR COMPONENTS**

**Sec.**

541. Graduates of the United States Military, Naval, and Air Force Academies.

555. Warrant officers: grades.

556. Warrant officers: original appointment: service credit.

557. Warrant officers: promotion; qualifications.

558. Warrant officers: promotion; selection boards.

559. Warrant officers: eligibility for promotion.

560. Warrant officers: promotion; selection procedure.

561. Warrant officers: effect of failure of selection for promotion.

562. Warrant officers: disapproval of promotion by Secretary concerned, President, or Senate.

563. Warrant officers: promotion; effective date.

564. Warrant officers: effect of second failure of promotion.

565. Warrant officers: suspension of laws for promotion or mandatory retirement or separation during war or emergency.

**§ 541. Graduates of the United States Military, Naval, and Air Force Academies**

(a) Notwithstanding any other provision of law, each cadet at the United States Military Academy or the United States Air Force Academy, and each midshipman at the United States Naval Academy, is entitled, before graduating from that Academy, to state his preference for appointment, upon graduation, as a commissioned officer in either the Army, Navy, Air Force, or Marine Corps.

(b) With the consent of the Secretary of the military department administering the Academy from which the cadet or midshipman is to be graduated, and of the Secretary of the military department having jurisdiction over the armed force for which that graduate stated his preference, the graduate is entitled to be accepted for appointment in that armed force. However, not more than 12½ percent of any graduating class at an Academy may be appointed in armed forces not under the jurisdiction of the military department administering that Academy.

(c) The Secretary of Defense shall, by regulation, provide for the equitable distribution of appointments in cases where more than 12½ percent of the graduating class of any Academy request appointment in armed forces not under the jurisdiction of the military department administering that Academy.

#### § 555. Warrant officers: grades

(a) The regular warrant officer grades in each armed force corresponding to the pay grades prescribed for warrant officers by section 232 (a) of title 37 are as follows:

Warrant officer grade:	Pay Grade
Chief warrant officer, W-4	W-4
Chief warrant officer, W-3	W-3
Chief warrant officer, W-2	W-2
Warrant officer, W-1	W-1

(b) Appointments of regular chief warrant officers of the Army and the Air Force shall be made by warrant by the Secretary concerned. Permanent appointments of regular chief warrant officers of the Navy, Marine Corps, and Coast Guard shall be made by commission by the President, by and with the advice and consent of the Senate. Permanent appointments of regular warrant officers, W-1, shall be made by warrant by the Secretary concerned.

#### § 556. Warrant officers: original appointment; service credit

For the purposes of promotion, persons originally appointed in regular warrant officer grades under section 555 of this title shall be credited with such service as the Secretary concerned may prescribe. However, such a person may not be credited with a period of service greater than the period of active service performed in the grade, or pay grade corresponding to the grade, in which so appointed, or in any higher grade or pay grade.

#### § 557. Warrant officers: promotion; qualifications

(a) The promotion of permanent regular warrant officers to permanent regular warrant officer grades shall be governed by such regulations relating to physical, moral, and professional qualifications as the Secretary concerned may prescribe. However, the physical qualifications for promotion must be the same as those prescribed for retention on active duty.

(b) A regular warrant officer who is selected for promotion to the next higher regular warrant officer grade under this chapter, but who, within such time as may be prescribed by the Secretary concerned, fails to meet the moral and professional qualifications prescribed by the Secretary under subsection (a), shall be treated as if he had twice failed of selection for promotion.

#### § 558. Warrant officers: promotion; selection boards

(a) Whenever the Secretary concerned determines that the needs of the service so require, but at least once a year, he shall appoint selection boards to consider permanent regular warrant officers for promotion to permanent regular warrant officer grades. Each board shall be composed of at least five officers of the armed force concerned who hold a permanent regular grade above major or lieutenant commander.

(b) No officer may serve on two consecutive boards under this section, if the second board considers any warrant officer who was considered by the first board.

(c) The Secretary concerned shall prescribe all other matters relating to the functions and duties of the boards, including the number of members constituting a quorum.

#### **§ 559. Warrant officers: eligibility for promotion**

Each permanent regular warrant officer shall be considered by a selection board for promotion to the next higher permanent regular warrant officer grade far enough in advance of the date upon which he will complete (1) three years of service in his permanent regular warrant officer grade, if he is in the grade of warrant officer, W-1, or (2) six years of service in his permanent regular warrant officer grade, if he is in the grade of chief warrant officer, W-2, or chief warrant officer, W-3, so that he may be promoted as of the day after the date on which he will complete that service.

#### **§ 560. Warrant officers: promotion; selection procedure**

(a) The Secretary concerned shall furnish each selection board a list of all permanent regular warrant officers, in order of seniority in permanent regular grade, who are eligible to be considered for promotion to the next higher permanent regular warrant officer grade.

(b) From the list of warrant officers, W-1, the selection board shall select those whom it considers fully qualified for promotion. It shall also report the names of those whom it recommends for termination under section 1164 of this title.

(c) The Secretary concerned shall prescribe the number of warrant officers who may be selected under this section for promotion to each of the grades of chief warrant officer, W-3, and chief warrant officer, W-4. The number so prescribed by him for a grade may not be less than 80 percent of the number of warrant officers who are being considered for the first time for promotion to that grade.

(d) From the list of chief warrant officers, W-2, and chief warrant officers, W-3, the selection board shall select for promotion to the next higher permanent regular warrant officer grade those whom it considers best qualified for promotion, but not more than the number specified by the Secretary.

(e) Under such regulations as the Secretary may prescribe, the selection board shall report the names of those chief warrant officers considered by it whose records and reports establish, in its opinion, their unfitness or unsatisfactory performance in their permanent regular grades. A warrant officer whose name is so reported shall be retired, enlisted, or separated under section 1165 or 1166 of this title.

(f) The names of warrant officers selected for promotion under this section shall be arranged in the board's report in order of seniority in permanent regular grade.

(g) The report of the selection board shall be submitted to the Secretary concerned. The Secretary may approve or disapprove all or part of the report.

**§ 561. Warrant officers: effect of failure of selection for promotion**

A regular warrant officer who has been considered by a selection board for promotion under section 559 of this title, but not selected, shall be considered for promotion by each later selection board that considers officers in his permanent regular grade, until he is retired, separated, or selected for promotion.

**§ 562. Warrant officers: disapproval of promotion by Secretary concerned, President, or Senate**

(a) If the Secretary concerned, the President, or the Senate disapproves the promotion of a permanent regular warrant officer before it takes effect, his name shall be removed from the list of those selected for the promotion and he continues to be eligible for consideration for promotion.

(b) If the next selection board selects that warrant officer for promotion, his name shall be replaced without prejudice on the list from which it was removed. If he is promoted, his date of appointment is the date it would have been had his name not been removed.

(c) If the next selection board does not select him for promotion, or if his name is again removed under subsection (a) from the list of officers selected by the next selection board, he shall be treated as if he had twice failed of selection for promotion.

**§ 563. Warrant officers: promotion; effective date**

(a) A permanent regular warrant officer who is selected for promotion to the next higher permanent regular warrant officer grade by the first selection board that considered him for promotion to that grade, and who is qualified under section 557 (a) of this title, shall be promoted to that grade. His date of appointment in that grade is the day after he completes the service prescribed in section 559 of this title.

(b) A permanent regular warrant officer who is selected for promotion to the next higher permanent regular warrant officer grade after having previously failed of selection for promotion to that grade, and who is qualified under section 557 (a) of this title, shall be promoted to that grade. His date of appointment in that grade is the earlier of the following dates:

(1) One year after the date upon which his promotion would have been effective had he been selected by the last selection board that failed to select him.

(2) The earliest date upon which any warrant officer who did not fail of selection, and whose name follows his on the list submitted to the Secretary under section 560 (g) of this title, is promoted to that grade.

**§ 564. Warrant officers: effect of second failure of promotion**

(a) Unless retired or separated under some other provision of law, a permanent regular warrant officer who has twice failed of selection for promotion to the next higher permanent regular warrant officer grade shall—



(1) if he has more than 20 years of active service that could be credited to him under section 311 of title 37 on (A) the date when the Secretary concerned approves the report of the board under section 560 (g) of this title, (B) the date when his name was removed from the recommended list under section 562 (a) of this title, or (C) the date prescribed by the Secretary concerned under section 557 (b) of this title, whichever applies, be retired 60 days after that date, except as provided by section 47a of title 5, with retired pay computed under section 1401 of this title;

(2) if he has at least 18 but not more than 20 years of such active service on (A) the date when the Secretary concerned approves the report of the board under section 560 (g) of this title, (B) the date when his name was removed from the recommended list under section 562 (a) of this title, or (C) the date prescribed by the Secretary concerned under section 557 (b) of this title, whichever applies, be retired 60 days after the date upon which he completes 20 years of active service, except as provided by section 47a of title 5, with retired pay computed under section 1401 of this title, unless he is selected for promotion to the next higher permanent regular grade before that date; or

(3) if he has less than 18 years of such active service on (A) the date when the Secretary concerned approves the report of the board under section 560 (g) of this title, (B) the date when his name was removed from the recommended list under section 562 (a) of this title, or (C) the date prescribed by the Secretary concerned under section 557 (b) of this title, whichever applies, be separated 60 days after that date with severance pay computed under section 1167 of this title, unless—

(A) upon his request and in the discretion of the Secretary concerned, he is enlisted in the grade prescribed by the Secretary; or

(B) he is serving on active duty in a grade above chief warrant officer, W-4, and elects, with the consent of the Secretary concerned, to remain on active duty in that status.

(b) The Secretary concerned may defer, for not more than four months, the retirement or separation under this section of any warrant officer if, because of unavoidable circumstances, evaluation of his physical condition and determination of his entitlement to retirement or separation for physical disability require hospitalization or medical observation that cannot be completed before the date when he would otherwise be required to retire or be separated under this section.

(c) The Secretary concerned may defer, until such date as he prescribes, the retirement under subsection (a) of a warrant officer who is serving on active duty as a commissioned officer and who elects to continue to so serve.

(d) If a warrant officer who also holds a grade above chief warrant officer, W-4, is retired or separated under subsection (a), his commission in the higher grade shall be terminated on the date when he is so retired or separated.

**§ 565. Warrant officers: suspension of laws for promotion or mandatory retirement or separation during war or emergency**

In time of war, or of emergency declared after May 29, 1954, by Congress or the President, the President may suspend the operation of any provision of law relating to promotion, or mandatory retirement or separation, of permanent regular warrant officers of any armed force.

**CHAPTER 35.—APPOINTMENTS AS RESERVE OFFICERS**

Sec.

591. Reserve components: qualifications.

593. Commissioned officers: appointment, how made; term.

594. Commissioned officers: original appointment; limitation.

595. Officers: appointment upon transfer.

596. Officers: promotion.

597. Warrant officers: grades; appointment, how made; term.

598. Warrant officers: promotion.

599. Warrant officers: suspension of laws for promotion or mandatory retirement or separation during war or emergency.

600. Officer candidates.

**§ 591. Reserve components: qualifications**

(a) To become an officer of a reserve component a person must be appointed as a Reserve of an armed force in a grade corresponding to a grade authorized for the regular component of the armed force concerned and subscribe to the oath prescribed by section 16 of title 5. In addition, to become an officer of the Army National Guard of the United States or the Air National Guard of the United States, he must first be appointed to, and be federally recognized in, the same grade in the Army National Guard or the Air National Guard, as the case may be.

(b) Except as otherwise provided by law, the Secretary concerned shall prescribe physical, mental, moral, professional, and age qualifications for the appointment of persons as Reserves of the armed forces under his jurisdiction. However, except as provided in section 454 (i) (7) of title 50, appendix, no person may be appointed as a Reserve unless he is at least 18 years of age and—

(1) he is, or has made a declaration of intention to become, a citizen of the United States or of a possession thereof; or

(2) he has previously served in the armed forces or in the National Security Training Corps.

(c) Women may be appointed as Reserves of the armed forces for service in the Army Reserve, Naval Reserve, Air Force Reserve, Marine Corps Reserve, and Coast Guard Reserve. Women are appointed in grades corresponding to the grades authorized for female officers of the regular component of the armed force concerned. Any female former officer of an armed force may, if otherwise qualified, be appointed as a Reserve of that armed force in the highest grade in which she previously served satisfactorily on active duty (other than for training).

(d) A person who is otherwise qualified, but who has a physical defect that the Secretary concerned determines will not interfere with the performance of the duties to which that person may be as-

signed, may be appointed as a Reserve of any armed force under the jurisdiction of that Secretary.

**§ 593. Commissioned officers: appointment, how made; term**

(a) Appointments of Reserves in commissioned grades below general officer and flag officer, except commissioned warrant officer, shall be made by the President alone. Appointments of Reserves as general and flag officers shall be made by the President, by and with the advice and consent of the Senate.

(b) Appointments of Reserves in commissioned grades are for an indefinite term and are held during the pleasure of the President.

**§ 594. Commissioned officers: original appointment; limitation**

(a) No person may be appointed as a Reserve in a commissioned grade above major or lieutenant commander, unless—

(1) he was formerly a commissioned officer of an armed force;

or

(2) such an appointment is recommended by a board of officers convened by the Secretary concerned.

(b) This section does not apply to adjutants general and assistant adjutants general of the several States and Territories, Puerto Rico, the Canal Zone, and the District of Columbia.

**§ 595. Officers: appointment upon transfer**

(a) A person who would otherwise be required to be transferred to a reserve component under section 651 of this title or under sections 451-473 of title 50, appendix, is entitled, if he is qualified and accepted, to be appointed as an officer of any armed force that he chooses and to participate in the programs authorized for that armed force. However, unless the two Secretaries concerned consent, he may not be appointed as a Reserve of an armed force other than that from which he is transferred. All periods of his participation shall be credited against the total period of service required of him under section 651 of this title or under sections 451-473 of title 50, appendix. However, no period may be credited more than once.

(b) A person covered by subsection (a) shall perform the rest of his required term of service in the armed force in which he is so appointed or in any other armed force in which he is later appointed or enlisted.

(c) This section does not change any term of service under an appointment, enlistment, or agreement, including an agreement made before or at the time when the member entered upon a program authorized by an armed force.

**§ 596. Officers: promotion**

The Secretary concerned shall establish an adequate and equitable system for promoting officers of the reserve components under his jurisdiction who are in an active status. So far as practicable, each promotion system shall be similar to that for members of the regular component of the armed force concerned. It shall be based on the mobilization requirements of that armed force to provide qualified officers in each grade at ages suitable for their assignments and in the numbers needed for mobilization. Each promotion system shall provide for forced attrition to the extent necessary to maintain vigor-

ous reserve forces, encourage necessary leadership, and provide a steady flow of promotions.

**§ 597. Warrant officers: grades; appointment, how made; term**

(a) The permanent reserve warrant officer grades in each armed force are those prescribed for regular warrant officers by section 555 (a) of this title.

(b) Reserve chief warrant officers of the Army and the Air Force shall be appointed in those grades, by warrant, by the Secretary concerned. Permanent reserve chief warrant officers of the Navy, Marine Corps, and Coast Guard shall be appointed in those grades, by commission, by the Secretary concerned. Permanent reserve warrant officers, W-1, shall be appointed in those grades, by warrant, by the Secretary concerned.

(c) Appointments as Reserves in permanent warrant officer grades are for an indefinite term and are held during the pleasure of the Secretary concerned.

**§ 598. Warrant officers: promotion**

The promotion of permanent reserve warrant officers to permanent reserve warrant officer grades shall be governed by such regulations as the Secretary concerned may prescribe.

**§ 599. Warrant officers: suspension of laws for promotion or mandatory retirement or separation during war or emergency**

In time of war, or of emergency declared after May 29, 1954, by Congress or the President, the President may suspend the operation of any provision of law relating to promotion, or mandatory retirement or separation, of permanent reserve warrant officers of any armed force.

**§ 600. Officer candidates**

(a) Within such numbers as the Secretary concerned may prescribe, enlisted Reserves may, with their consent, be selected for training as officer candidates. Enlisted Reserves so selected shall be designated as officer candidates during that training. However, no member of the Army National Guard of the United States or the Air National Guard of the United States may be so selected or designated unless—

(1) he is on active duty; or

(2) the governor or other appropriate authority of the jurisdiction concerned consents.

(b) The enlistment or term of service of a Reserve who is designated as an officer candidate under this section is extended to include any period, beyond its normal expiration date, during which he is an officer candidate.

(c) While he is on active duty, other than active duty for training without pay, or performing authorized travel to and from that duty, an officer candidate designated under this section is entitled to the pay and allowances of his enlisted grade, but not less than those prescribed for pay grade E-2.

(d) An officer candidate designated under this section may not participate in the program of a reserve officer training corps of any armed force.



## CHAPTER 37.—SERVICE REQUIREMENTS FOR RESERVES

Sec.

651. Members: required service.

### § 651. Members: required service

(a) Each male person who becomes a member of an armed force before his twenty-sixth birthday shall serve in the armed forces for a total of eight years, unless he is sooner discharged because of personal hardship under regulations prescribed by the Secretary of Defense or, if he is a member of the Coast Guard while it is operating under the Department of the Treasury, by the Secretary of the Treasury. For the purpose of computing service under this subsection, a member of an armed force may count service in the National Security Training Corps as if it were service in the armed forces.

(b) Each person covered by subsection (a) who is not a Reserve, and who is qualified, shall, upon his release from active duty, be transferred to a reserve component of his armed force to complete the service required by subsection (a).

(c) A member covered by subsection (a) who is released from active duty shall become a member of an organized unit of his reserve component or of an officers' training program of his armed force, if the Secretary concerned determines that there is a vacancy that can be filled by that member without undue personal hardship.

## CHAPTER 39.—ACTIVE DUTY

Sec.

671. Members not to be assigned outside United States before completing training.

672. Reserve components generally.

673. Ready Reserve.

674. Standby Reserve.

675. Retired Reserve.

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681. Reserves: release from active duty.

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### § 671. Members not to be assigned outside United States before completing training

No member of an armed force may be assigned to active duty on land outside the United States and its Territories and possessions, until he has had four months of basic training or its equivalent.

### § 672. Reserve components generally

(a) In time of war or of national emergency declared by Congress, or when otherwise authorized by law, an authority designated by the Secretary concerned may, without the consent of the persons affected, order any unit, and any member not assigned to a unit organized to serve as a unit, of a reserve component under the jurisdiction of that Secretary to active duty for the duration of the war or emergency

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and for six months thereafter. However, a member on an inactive status list or in a retired status may not be ordered to active duty under this subsection unless the Secretary concerned, with the approval of the Secretary of Defense in the case of a Secretary of a military department, determines that there are not enough qualified Reserves in an active status or in the inactive Army National Guard or in the inactive Air National Guard in the required category who are readily available.

(b) At any time, an authority designated by the Secretary concerned may, without the consent of the persons affected, order any unit, and any member not assigned to a unit organized to serve as a unit, in an active status in a reserve component under the jurisdiction of that Secretary to active duty for not more than 15 days a year. However, units and members of the Army National Guard of the United States or the Air National Guard of the United States may not be ordered to active duty under this subsection without the consent of the governor of the State or Territory, Puerto Rico, or the Canal Zone, or the commanding general of the District of Columbia National Guard, as the case may be.

(c) So far as practicable, during any expansion of the active armed forces that requires that units and members of the reserve components be ordered to active duty, members of units organized and trained to serve as units who are ordered to that duty without their consent shall be so ordered with their units. However, members of those units may be reassigned after being ordered to active duty.

(d) At any time, an authority designated by the Secretary concerned may order a member of a reserve component under his jurisdiction to active duty, or retain him on active duty, with the consent of that member. However, a member of the Army National Guard of the United States or the Air National Guard of the United States may not be ordered to active duty under this subsection without the consent of the governor or other appropriate authority of the State or Territory, Puerto Rico, the Canal Zone, or the District of Columbia, whichever is concerned.

(e) A reasonable time shall be allowed between the date when a Reserve ordered to active duty (other than for training) is alerted for that duty and the date when he is required to enter upon that duty. Unless the Secretary concerned determines that the military requirements do not allow it, this period shall be at least 30 days.

### **§ 673. Ready Reserve**

(a) In time of national emergency declared by the President after January 1, 1953, or when otherwise authorized by law, an authority designated by the Secretary concerned may, without the consent of the persons concerned, order any unit, and any member not assigned to a unit organized to serve as a unit, in the Ready Reserve under the jurisdiction of that Secretary to active duty for not more than 24 consecutive months. This subsection does not apply unless Congress determines how many members of the reserve components are necessary, in the interest of national security, to be ordered to active duty hereunder.

(b) To achieve fair treatment as between members in the Ready Reserve who are being considered for recall to duty without their consent, consideration shall be given to—

(1) the length and nature of previous service, to assure such sharing of exposure to hazards as the national security and military requirements will reasonably allow;

(2) family responsibilities; and

(3) employment necessary to maintain the national health, safety, or interest.

The Secretary of Defense shall prescribe such policies and procedures as he considers necessary to carry out this subsection. He shall report on those policies and procedures at least once a year to the Committees on Armed Services of the Senate and the House of Representatives.

#### **§ 674. Standby Reserve**

(a) Units and members in the Standby Reserve may be ordered to active duty (other than for training) only in time of war, of national emergency declared by Congress, or when otherwise authorized by law.

(b) In time of emergency—

(1) no unit in the Standby Reserve organized to serve as a unit or any member thereof may be ordered to active duty (other than for training), unless the Secretary concerned, with the approval of the Secretary of Defense in the case of a Secretary of a military department, determines that there are not enough of the required kinds of units in the Ready Reserve that are readily available; and

(2) no other member in the Standby Reserve may be ordered to active duty (other than for training) as an individual without his consent, unless the Secretary concerned, with the approval of the Secretary of Defense in the case of a Secretary of a military department, determines that there are not enough qualified members in the Ready Reserve in the required category who are readily available.

#### **§ 675. Retired Reserve**

A member in the Retired Reserve may, if qualified, be ordered to active duty without his consent, but only as provided in section 672 (a) of this title.

#### **§ 676. Retention after becoming qualified for retired pay**

Any person who has qualified for retired pay under chapter 67 of this title may, with his consent and by order of the Secretary concerned, be retained on active duty, or in service in a reserve component other than that listed in section 1332 (b) of this title. A member so retained shall be credited with that service for all purposes.

#### **§ 677. Reserve officers: use of in expansion of armed forces**

When an expansion of the active armed forces requires that officers of the reserve components who are not members of units organized to serve as such be ordered as individuals to active duty (other than for training) without their consent, the services of qualified and available reserve officers in all grades shall be used, so far as practicable, according to the needs of the branches, grades, or specialties concerned.

**§ 678. Reserves: for organizing, administering, etc., reserve components**

(a) A Reserve ordered to active duty under section 672 (d) of this title in connection with organizing, administering, recruiting, instructing, or training the reserve components shall be ordered in his reserve grade. While so serving, he continues to be eligible for promotion as a Reserve, if he is otherwise qualified.

(b) To assure that a Reserve on duty under subsection (a) receives periodic refresher training in the categories for which he is qualified, the Secretary concerned may detail him to duty with any armed force, or otherwise as the Secretary sees fit.

**§ 679. Active duty agreements**

(a) To provide definite terms of active duty (other than for training) for Reserves with their consent, the Secretary concerned may make a standard written agreement with any member of a reserve component under his jurisdiction requiring the member to serve for a period of active duty (other than for training) of not more than five years. When such an agreement expires, a new one may be made. This subsection does not apply in time of war declared by Congress.

(b) An agreement may not be made under subsection (a) unless the specified period of duty is at least 12 months longer than any period of active duty that the member is otherwise required to perform.

(c) Agreements made under subsection (a) shall be uniform so far as practicable, and are subject to such standards and policies as may be prescribed by the Secretary of Defense for the armed forces under his jurisdiction or by the Secretary of the Treasury for the Coast Guard when the Coast Guard is not operating as a service in the Navy.

(d) If an agreement made under subsection (a) expires during a war or during a national emergency declared by Congress or the President after January 1, 1953, the Reserve concerned may be kept on active duty, without his consent, as otherwise prescribed by law.

**§ 680. Active duty agreements: release from duty**

(a) Each agreement made under section 679 (a) of this title shall provide that the member may not be released from active duty without his consent during the period of the agreement—

(1) because of a reduction in the actual personnel strength of the armed force concerned, unless the release is in accordance with the recommendation of a board of officers appointed by an authority designated by the Secretary concerned to determine the members to be released from active duty under regulations prescribed by the Secretary; or

(2) for any other reason, without an opportunity to be heard by a board of officers before the release, unless he is (A) dismissed or discharged under the sentence of a court-martial, (B) released because of an unexplained absence without leave for at least three months, or (C) released because he is convicted and sentenced to confinement in a Federal or State penitentiary or correctional institution and the sentence has become final.

(b) A member who is released from active duty without his consent before the end of his agreement made under section 679 (a) of



this title is entitled to an amount computed by multiplying the number of years and fractions of a year of his unexpired period of service under the agreement by the sum of one month's basic pay, special pay, and allowances to which he is entitled on the day of his release. The amount to which a member is entitled under this subsection is in addition to any pay and allowances to which he is otherwise entitled. For the purposes of this subsection, a fraction of a month of 15 days or more is counted as a whole month, and a fraction of a month of less than 15 days is disregarded. This subsection does not apply to a member if he is—

- (1) released for a reason described in subsection (a) (2) (A)–(C);
- (2) released because of a physical disability resulting from his intentional misconduct or wilful neglect;
- (3) eligible for retired pay or severance pay under another provision of law;
- (4) placed on a temporary disability retired list; or
- (5) released to accept an appointment, or to be enlisted, in a regular component of an armed force.

#### **§ 681. Reserves: release from active duty**

(a) Except as otherwise provided in this title, the Secretary concerned may at any time release a Reserve under his jurisdiction from active duty.

(b) In time of war or of national emergency declared by Congress or the President after January 1, 1953, a member of a reserve component may be released from active duty (other than for training) only if—

- (1) a board of officers convened at his request by an authority designated by the Secretary concerned recommends the release and the recommendation is approved;
- (2) the member does not request that a board be convened; or
- (3) his release is otherwise authorized by law.

This subsection does not apply to an armed force during a period of demobilization or reduction in strength of that armed force.

#### **§ 682. Reserves: kinds of duty**

Notwithstanding any other provision of law, a member of a reserve component who is on active duty other than for training may, under regulations prescribed by the Secretary concerned, be detailed or assigned to any duty authorized by law for members of the regular component of the armed force concerned.

#### **§ 683. Reserves: duty with or without pay**

(a) Subject to other provisions of this title, any Reserve may be ordered to active duty or other duty—

- (1) with the pay and allowances provided by law; or
- (2) with his consent, without pay.

Duty without pay shall be considered for all purposes as if it were duty with pay.

(b) A Reserve who is kept on active duty after his term of service expires is entitled to pay and allowances while on that duty, except as they may be forfeited under the approved sentence of a court-martial

or by non-judicial punishment by a commanding officer or when he is otherwise in a non-pay status.

#### **§ 686. Reports to Congress**

The Secretary of each military department shall report to the Committees on Armed Services of the Senate and the House of Representatives, not later than January 30 of each year—

(1) the estimated requirements of the armed forces under the jurisdiction of his department in members on active duty during the next fiscal year;

(2) the estimated number of commissioned officers in each grade on active duty and to be promoted during the next fiscal year; and

(3) an analysis of the distribution by grade of commissioned officers on active duty at that time.

### **CHAPTER 41.—SPECIAL APPOINTMENTS, ASSIGNMENTS, DETAILS, AND DUTIES**

**Sec.**

**711.** Senior members of Military Staff Committee of United Nations: appointment.

**712.** Foreign governments: detail to assist.

**713.** State Department: assignment or detail as couriers and building inspectors.

**714.** Reports to Congress on length of tours of duty outside United States by members of Army and Air Force.

**715.** Reserve components: detail of members of regular and reserve components to assist.

#### **§ 711. Senior members of Military Staff Committee of United Nations: appointment**

The President, by and with the advice and consent of the Senate, may appoint an officer of the Army, an officer of the Navy or the Marine Corps, and an officer of the Air Force, as senior members of the Military Staff Committee of the United Nations. An officer so appointed has the grade of lieutenant general or vice admiral, as the case may be, while serving under that appointment.

#### **§ 712. Foreign governments: detail to assist**

(a) Upon the application of the country concerned, the President, whenever he considers it in the public interest, may detail members of the Army, Navy, Air Force, and Marine Corps to assist in military matters—

(1) any republic in North America, Central America, or South America;

(2) the Republic of Cuba, Haiti, or Santo Domingo; and

(3) during a war or a declared national emergency, any other country that he considers it advisable to assist in the interest of national defense.

(b) Subject to the prior approval of the Secretary of the military department concerned, and in addition to receiving his pay and allowances as a member of the armed forces, a member detailed under this section may accept from the country to which he is detailed any office and any compensation or emoluments thereof. He is entitled to credit for all service while so detailed, as if serving with the armed forces of the United States.

**§ 713. State Department: assignment or detail as couriers and building inspectors**

(a) Upon the request of the Secretary of State, the Secretary of a military department may assign or detail members of the armed forces under his jurisdiction for duty—

(1) as inspectors of buildings owned or occupied abroad by the United States;

(2) as inspectors or supervisors of buildings under construction or repair abroad by or for the United States; and

(3) as couriers of the Department of State.

(b) The Secretary concerned may assign or detail a member for duty under subsection (a) with or without reimbursement from the Department of State. However, a member so assigned or detailed may be paid the traveling expenses authorized for officers of the Foreign Service of the United States. These expenses shall be paid from appropriations of the Department of State.

**§ 714. Reports to Congress on length of tours of duty outside United States by members of Army and Air Force**

The Secretary of Defense shall advise the Committees on Armed Services of the Senate and the House of Representatives, on April 1 and October 1 of each year, of the regulations governing the length of tours of duty outside the United States by members of the Army and the Air Force, including any changes in those regulations.

**§ 715. Reserve components: detail of members of regular and reserve components to assist**

The Secretary concerned shall detail such members of the regular and reserve components under his jurisdiction as are necessary to effectively develop, train, instruct, and administer those reserve components.

**CHAPTER 43.—RANK AND COMMAND**

Sec.

741. Rank: commissioned officers of Army, Navy, Air Force, and Marine Corps.

742. Rank: officers of regular and reserve components.

743. Rank: Chief of Staff of the Army; Chief of Naval Operations; Chief of Staff of the Air Force.

744. Physician to White House: assignment; grade.

745. Warrant officers: rank.

**§ 741. Rank: commissioned officers of Army, Navy, Air Force, and Marine Corps**

(a) The commissioned officers listed below rank among themselves as follows:

Army, Air Force, and Marine Corps	Navy and Coast Guard
Lieutenant general.....	Vice admiral.
Major general.....	Rear admiral entitled to pay of upper half.
Brigadier general.....	Rear admiral entitled to pay of lower half.
Colonel.....	Captain.
Lieutenant colonel.....	Commander.
Major.....	Lieutenant commander.
Captain.....	Lieutenant.
First lieutenant.....	Lieutenant (junior grade).
Second lieutenant.....	Ensign.

(b) The rank, within each grade, among major generals of the Army, rear admirals entitled to the pay of the upper half of that grade in the Navy, major generals of the Air Force, and major generals of the Marine Corps, and among brigadier generals of the Army, rear admirals entitled to the pay of the lower half of that grade in the Navy, brigadier generals of the Air Force, and brigadier generals of the Marine Corps, is determined by their dates of rank.

(c) A commissioned officer of the Army or the Air Force who is senior in rank to a commissioned officer of the Regular Army or the Regular Air Force, as the case may be, is senior to a commissioned officer of the Navy or Marine Corps who is junior to that officer.

**§ 742. Rank: officers of regular and reserve components**

A regular officer and a reserve officer rank as between themselves according to their dates of rank in grade.

**§ 743. Rank: Chief of Staff of the Army; Chief of Naval Operations; Chief of Staff of the Air Force**

The Chief of Staff of the Army, the Chief of Naval Operations, and the Chief of Staff of the Air Force rank among themselves according to dates of appointment to those offices, and rank above all other officers on the active list of the Army, Navy, Air Force, and Marine Corps, except the Chairman of the Joint Chiefs of Staff.

**§ 744. Physician to White House: assignment; grade**

An officer of the Medical Corps of the Army, or a medical officer of the Air Force, who is below the grade of colonel and who is assigned to duty as physician to the White House has the rank, pay, and allowances of colonel while so serving. An officer of the Medical Corps of the Navy who is below the grade of captain and who is assigned to that duty has the rank, pay, and allowances of captain while so serving.

**§ 745. Warrant officers: rank**

A person serving in a warrant officer grade outranks all warrant officers in warrant officer grades of lower numerical designation.

## CHAPTER 45.—THE UNIFORM

Sec.

771. Unauthorized wearing prohibited.

772. When wearing by persons not on active duty authorized.

773. When distinctive insignia required.

774. Applicability of chapter.

**§ 771. Unauthorized wearing prohibited**

Except as otherwise provided by law, no person except a member of the Army, Navy, Air Force, or Marine Corps, as the case may be, may wear—

(1) the uniform, or a distinctive part of the uniform, of the Army, Navy, Air Force, or Marine Corps; or

(2) a uniform any part of which is similar to a distinctive part of the uniform of the Army, Navy, Air Force, or Marine Corps.



### **§ 772. When wearing by persons not on active duty authorized**

(a) A member of the Army National Guard or the Air National Guard may wear the uniform prescribed for the Army National Guard or the Air National Guard, as the case may be.

(b) A member of the Naval Militia may wear the uniform prescribed for the Naval Militia.

(c) A retired officer of the Army, Navy, Air Force, or Marine Corps may bear the title and wear the uniform of his retired grade. However, a retired officer of the Navy Nurse Corps may wear the uniform of her retired grade under such conditions as the Secretary of the Navy may prescribe.

(d) A person who is discharged honorably or under honorable conditions from the Army, Navy, Air Force, or Marine Corps may wear his uniform while going from the place of discharge to his home, within three months after his discharge.

(e) A person not on active duty who served honorably in time of war in the Army, Navy, Air Force, or Marine Corps may bear the title, and, when authorized by regulations prescribed by the President, wear the uniform, of the highest grade held by him during that war.

(f) While portraying a member of the Army, Navy, Air Force, or Marine Corps, an actor in a theatrical or motion-picture production may wear the uniform of that armed force if the portrayal does not tend to discredit that armed force.

(g) An officer or resident of a veterans' home administered by the Veterans' Administration may wear such uniform as the Secretary of the military department concerned may prescribe.

(h) While attending a course of military instruction conducted by the Army, Navy, Air Force, or Marine Corps, a civilian may wear the uniform prescribed by that armed force.

(i) Under such regulations as the Secretary of the Air Force may prescribe, a citizen of a foreign country who graduates from an Air Force school may wear the appropriate aviation badges of the Air Force.

(j) A person in any of the following categories may wear the uniform prescribed for that category:

(1) Members of the Boy Scouts of America.

(2) Members of any other organization designated by the Secretary of a military department.

### **§ 773. When distinctive insignia required**

(a) A person for whom one of the following uniforms is prescribed may wear it, if it includes distinctive insignia prescribed by the Secretary of the military department concerned to distinguish it from the uniform of the Army, Navy, Air Force, or Marine Corps, as the case may be:

(1) The uniform prescribed by the university, college, or school for an instructor or member of the organized cadet corps of—

(A) a State university or college, or a public high school, having a regular course of military instruction; or

(B) an educational institution having a regular course of military instruction, and having a member of the Army, Navy, Air Force, or Marine Corps as instructor in military science and tactics.

(2) The uniform prescribed by a military society composed of persons discharged honorably or under honorable conditions from the Army, Navy, Air Force, or Marine Corps to be worn by a member of that society when authorized by regulations prescribed by the President.

(b) A uniform prescribed under subsection (a) may not include insignia of grade the same as, or similar to, those prescribed for officers of the Army, Navy, Air Force, or Marine Corps.

#### § 774. Applicability of chapter

This chapter applies in the United States, the Territories, Commonwealths, and possessions, and all other places under its jurisdiction.

### CHAPTER 47.—UNIFORM CODE OF MILITARY JUSTICE

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#### SUBCHAPTER I.—GENERAL PROVISIONS

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#### § 801. Article 1. Definitions

In this chapter:

(1) "Judge Advocate General" means, severally, the Judge Advocates General of the Army, Navy, and Air Force and, except when the Coast Guard is operating as a service in the Navy, the General Counsel of the Department of the Treasury.

(2) The Navy, the Marine Corps, and the Coast Guard when it is operating as a service in the Navy, shall be considered as one armed force.

(3) "Commanding officer" includes only commissioned officers.

(4) "Officer in charge" means a member of the Navy, the Marine Corps, or the Coast Guard designated as such by appropriate authority.

(5) "Superior commissioned officer" means a commissioned officer superior in rank or command.

(6) "Cadet" means a cadet of the United States Military Academy, the United States Air Force Academy, or the United States Coast Guard Academy.

(7) "Midshipman" means a midshipman of the United States Naval Academy and any other midshipman on active duty in the naval service.

(8) "Military" refers to any or all of the armed forces.

(9) "Accuser" means a person who signs and swears to charges, any person who directs that charges nominally be signed and sworn to by another, and any other person who has an interest other than an official interest in the prosecution of the accused.

(10) "Law officer" means an official of a general court-martial detailed in accordance with section 826 of this title (article 26).

(11) "Law specialist" means a commissioned officer of the Navy or Coast Guard designated for special duty (law).

(12) "Legal officer" means any commissioned officer of the Navy, Marine Corps, or Coast Guard designated to perform legal duties for a command.

## § 802. Art. 2. Persons subject to this chapter

The following persons are subject to this chapter :

(1) Members of a regular component of the armed forces, including those awaiting discharge after expiration of their terms of enlistment; volunteers from the time of their muster or acceptance into the armed forces; inductees from the time of their actual induction into the armed forces; and other persons lawfully called or ordered into, or to duty in or for training in, the armed forces, from the dates when they are required by the terms of the call or order to obey it.

(2) Cadets, aviation cadets, and midshipmen.

(3) Members of a reserve component while they are on inactive duty training authorized by written orders which are voluntarily accepted by them and which specify that they are subject to this chapter.

(4) Retired members of a regular component of the armed forces who are entitled to pay.

(5) Retired members of a reserve component who are receiving hospitalization from an armed force.

(6) Members of the Fleet Reserve and Fleet Marine Corps Reserve.

(7) Persons in custody of the armed forces serving a sentence imposed by a court-martial.

(8) Members of the Coast and Geodetic Survey, Public Health Service, and other organizations, when assigned to and serving with the armed forces.

(9) Prisoners of war in custody of the armed forces.

(10) In time of war, persons serving with or accompanying an armed force in the field.

(11) Subject to any treaty or agreement to which the United States is or may be a party or to any accepted rule of international law, persons serving with, employed by, or accompanying the armed forces outside the United States and outside the fol-

lowing: that part of Alaska east of longitude 172 degrees west, the Canal Zone, the main group of the Hawaiian Islands, Puerto Rico, and the Virgin Islands.

(12) Subject to any treaty or agreement to which the United States is or may be a party or to any accepted rule of international law, persons within an area leased by or otherwise reserved or acquired for the use of the United States which is under the control of the Secretary concerned and which is outside the United States and outside the following: that part of Alaska east of longitude 172 degrees west, the Canal Zone, the main group of the Hawaiian Islands, Puerto Rico, and the Virgin Islands.

#### **§ 803. Art. 3. Jurisdiction to try certain personnel**

(a) Subject to section 843 of this title (article 43), no person charged with having committed, while in a status in which he was subject to this chapter, an offense against this chapter, punishable by confinement for five years or more and for which the person cannot be tried in the courts of the United States or of a State, a Territory, or the District of Columbia, may be relieved from amenability to trial by court-martial by reason of the termination of that status.

(b) Each person discharged from the armed forces who is later charged with having fraudulently obtained his discharge is, subject to section 843 of this title (article 43), subject to trial by court-martial on that charge and is after apprehension subject to this chapter while in the custody of the armed forces for that trial. Upon conviction of that charge he is subject to trial by court-martial for all offenses under this chapter committed before the fraudulent discharge.

(c) No person who has deserted from the armed forces may be relieved from amenability to the jurisdiction of this chapter by virtue of a separation from any later period of service.

#### **§ 804. Art. 4. Dismissed officer's right to trial by court-martial**

(a) If any commissioned officer, dismissed by order of the President, makes a written application for trial by court-martial, setting forth, under oath, that he has been wrongfully dismissed, the President, as soon as practicable, shall convene a general court-martial to try that officer on the charges on which he was dismissed. A court-martial so convened has jurisdiction to try the dismissed officer on those charges, and he shall be considered to have waived the right to plead any statute of limitations applicable to any offense with which he is charged. The court-martial may, as part of its sentence, adjudge the affirmance of the dismissal, but if the court-martial acquits the accused or if the sentence adjudged, as finally approved or affirmed, does not include dismissal or death, the Secretary concerned shall substitute for the dismissal ordered by the President a form of discharge authorized for administrative issue.

(b) If the President fails to convene a general court-martial within six months from the presentation of an application for trial under this article, the Secretary concerned shall substitute for the dismissal ordered by the President a form of discharge authorized for administrative issue.

(c) If a discharge is substituted for a dismissal under this article, the President alone may reappoint the officer to such commissioned



grade and with such rank as, in the opinion of the President, that former officer would have attained had he not been dismissed. The reappointment of such a former officer shall be without regard to the existence of a vacancy and shall affect the promotion status of other officers only insofar as the President may direct. All time between the dismissal and the reappointment shall be considered as actual service for all purposes, including the right to pay and allowances.

(d) If an officer is discharged from any armed force by administrative action or is dropped from the rolls by order of the President, he has no right to trial under this article.

#### **§ 805. Art. 5. Territorial applicability of this chapter**

This chapter applies in all places.

#### **§ 806. Art. 6. Judge advocates and legal officers**

(a) The assignment for duty of all judge advocates of the Army and Air Force and law specialists of the Navy and Coast Guard shall be made upon the recommendation of the Judge Advocate General of the armed force of which they are members. The Judge Advocate General or senior members of his staff shall make frequent inspections in the field in supervision of the administration of military justice.

(b) Convening authorities shall at all times communicate directly with their staff judge advocates or legal officers in matters relating to the administration of military justice; and the staff judge advocate or legal officer of any command is entitled to communicate directly with the staff judge advocate or legal officer of a superior or subordinate command, or with the Judge Advocate General.

(c) No person who has acted as member, law officer, trial counsel, assistant trial counsel, defense counsel, assistant defense counsel, or investigating officer in any case may later act as a staff judge advocate or legal officer to any reviewing authority upon the same case.

### **SUBCHAPTER II.—APPREHENSION AND RESTRAINT**

Sec. Art.

807. 7. Apprehension.

808. 8. Apprehension of deserters.

809. 9. Imposition of restraint.

810. 10. Restraint of persons charged with offenses.

811. 11. Reports and receiving of prisoners.

812. 12. Confinement with enemy prisoners prohibited.

813. 13. Punishment prohibited before trial.

814. 14. Delivery of offenders to civil authorities.

#### **§ 807. Art. 7. Apprehension**

(a) Apprehension is the taking of a person into custody.

(b) Any person authorized under regulations governing the armed forces to apprehend persons subject to this chapter or to trial thereunder may do so upon reasonable belief that an offense has been committed and that the person apprehended committed it.

(c) Commissioned officers, warrant officers, petty officers, and noncommissioned officers have authority to quell quarrels, frays, and disorders among persons subject to this chapter and to apprehend persons subject to this chapter who take part therein.

### **§ 808. Art. 8. Apprehension of deserters**

Any civil officer having authority to apprehend offenders under the laws of the United States or of a State, Territory, Commonwealth, or possession, or the District of Columbia may summarily apprehend a deserter from the armed forces and deliver him into the custody of those forces.

### **§ 809. Art. 9. Imposition of restraint**

(a) Arrest is the restraint of a person by an order, not imposed as a punishment for an offense, directing him to remain within certain specified limits. Confinement is the physical restraint of a person.

(b) An enlisted member may be ordered into arrest or confinement by any commissioned officer by an order, oral or written, delivered in person or through other persons subject to this chapter. A commanding officer may authorize warrant officers, petty officers, or non-commissioned officers to order enlisted members of his command or subject to his authority into arrest or confinement.

(c) A commissioned officer, a warrant officer, or a civilian subject to this chapter or to trial thereunder may be ordered into arrest or confinement only by a commanding officer to whose authority he is subject, by an order, oral or written, delivered in person or by another commissioned officer. The authority to order such persons into arrest or confinement may not be delegated.

(d) No person may be ordered into arrest or confinement except for probable cause.

(e) Nothing in this article limits the authority of persons authorized to apprehend offenders to secure the custody of an alleged offender until proper authority may be notified.

### **§ 810. Art. 10. Restraint of persons charged with offenses**

Any person subject to this chapter charged with an offense under this chapter shall be ordered into arrest or confinement, as circumstances may require; but when charged only with an offense normally tried by a summary court-martial, he shall not ordinarily be placed in confinement. When any person subject to this chapter is placed in arrest or confinement prior to trial, immediate steps shall be taken to inform him of the specific wrong of which he is accused and to try him or to dismiss the charges and release him.

### **§ 811. Art. 11. Reports and receiving of prisoners**

(a) No provost marshal, commander of a guard, or master at arms may refuse to receive or keep any prisoner committed to his charge by a commissioned officer of the armed forces, when the committing officer furnishes a statement, signed by him, of the offense charged against the prisoner.

(b) Every commander of a guard or master at arms to whose charge a prisoner is committed shall, within twenty-four hours after that commitment or as soon as he is relieved from guard, report to the commanding officer the name of the prisoner, the offense charged against him, and the name of the person who ordered or authorized the commitment.

## **§ 812. Art. 12. Confinement with enemy prisoners prohibited**

No member of the armed forces may be placed in confinement in immediate association with enemy prisoners or other foreign nationals not members of the armed forces.

## **§ 813. Art. 13. Punishment prohibited before trial**

Subject to section 857 of this title (article 57), no person, while being held for trial or the result of trial, may be subjected to punishment or penalty other than arrest or confinement upon the charges pending against him, nor shall the arrest or confinement imposed upon him be any more rigorous than the circumstances require to insure his presence, but he may be subjected to minor punishment during that period for infractions of discipline.

## **§ 814. Art. 14. Delivery of offenders to civil authorities**

(a) Under such regulations as the Secretary concerned may prescribe, a member of the armed forces accused of an offense against civil authority may be delivered, upon request, to the civil authority for trial.

(b) When delivery under this article is made to any civil authority of a person undergoing sentence of a court-martial, the delivery, if followed by conviction in a civil tribunal, interrupts the execution of the sentence of the court-martial, and the offender after having answered to the civil authorities for his offense shall, upon the request of competent military authority, be returned to military custody for the completion of his sentence.

# **SUBCHAPTER III.—NON-JUDICIAL PUNISHMENT**

Sec. Art.

815. 15. Commanding officer's non-judicial punishment.

## **§ 815. Art. 15. Commanding officer's non-judicial punishment**

(a) Under such regulations as the President may prescribe, any commanding officer may, in addition to or in lieu of admonition or reprimand, impose one of the following disciplinary punishments for minor offenses without the intervention of a court-martial—

(1) upon officers of his command—

(A) withholding of privileges for not more than two consecutive weeks;

(B) restriction to certain specified limits, with or without suspension from duty, for not more than two consecutive weeks; or

(C) if imposed by an officer exercising general court-martial jurisdiction, forfeiture of not more than one-half of one month's pay; and

(2) upon other military personnel of his command—

(A) withholding of privileges for not more than two consecutive weeks;

(B) restriction to certain specified limits, with or without suspension from duty, for not more than two consecutive weeks;

(C) extra duties for not more than two consecutive weeks, and not more than two hours per day, holidays included;

(D) reduction to next inferior grade, if the grade from which demoted was established by the command or an equivalent or lower command;

(E) if imposed upon a person attached to or embarked in a vessel, confinement for not more than seven consecutive days; or

(F) if imposed upon a person attached to or embarked in a vessel, confinement on bread and water or diminished rations for not more than three consecutive days.

(b) The Secretary concerned may, by regulation, place limitations on the powers granted by this article with respect to the kind and amount of punishment authorized, the categories of commanding officers authorized to exercise those powers, and the applicability of this article to an accused who demands trial by court-martial.

(c) An officer in charge may, for minor offenses, impose on enlisted members assigned to the unit of which he is in charge, such of the punishments authorized to be imposed by commanding officers as the Secretary concerned may by regulation specifically prescribe, as provided in subsections (a) and (b).

(d) A person punished under this article who considers his punishment unjust or disproportionate to the offense may, through the proper channel, appeal to the next superior authority. The appeal shall be promptly forwarded and decided, but the person punished may in the meantime be required to undergo the punishment adjudged. The officer who imposes the punishment, his successor in command, and superior authority may suspend, set aside, or remit any part or amount of the punishment and restore all rights, privileges, and property affected.

(e) The imposition and enforcement of disciplinary punishment under this article for any act or omission is not a bar to trial by court-martial for a serious crime or offense growing out of the same act or omission, and not properly punishable under this article; but the fact that a disciplinary punishment has been enforced may be shown by the accused upon trial, and when so shown shall be considered in determining the measure of punishment to be adjudged in the event of a finding of guilty.

#### SUBCHAPTER IV.—COURT-MARTIAL JURISDICTION

Sec. Art.

816. 16. Courts-martial classified.

817. 17. Jurisdiction of courts-martial in general.

818. 18. Jurisdiction of general courts-martial.

819. 19. Jurisdiction of special courts-martial.

820. 20. Jurisdiction of summary courts-martial.

821. 21. Jurisdiction of courts-martial not exclusive.

#### § 816. Art. 16. Courts-martial classified

The three kinds of courts-martial in each of the armed forces are—

(1) general courts-martial, consisting of a law officer and not less than five members;

(2) special courts-martial, consisting of not less than three members; and

(3) summary courts-martial, consisting of one commissioned officer.



### **§ 817. Art. 17. Jurisdiction of courts-martial in general**

(a) Each armed force has court-martial jurisdiction over all persons subject to this chapter. The exercise of jurisdiction by one armed force over personnel of another armed force shall be in accordance with regulations prescribed by the President.

(b) In all cases, departmental review after that by the officer with authority to convene a general court-martial for the command which held the trial, where that review is required under this chapter, shall be carried out by the department that includes the armed force of which the accused is a member.

### **§ 818. Art. 18. Jurisdiction of general courts-martial**

Subject to section 817 of this title (article 17), general courts-martial have jurisdiction to try persons subject to this chapter for any offense made punishable by this chapter and may, under such limitations as the President may prescribe, adjudge any punishment not forbidden by this chapter, including the penalty of death when specifically authorized by this chapter. General courts-martial also have jurisdiction to try any person who by the law of war is subject to trial by a military tribunal and may adjudge any punishment permitted by the law of war.

### **§ 819. Art. 19. Jurisdiction of special courts-martial**

Subject to section 817 of this title (article 17), special courts-martial have jurisdiction to try persons subject to this chapter for any non-capital offense made punishable by this chapter and, under such regulations as the President may prescribe, for capital offenses. Special courts-martial may, under such limitations as the President may prescribe, adjudge any punishment not forbidden by this chapter except death, dishonorable discharge, dismissal, confinement for more than six months, hard labor without confinement for more than three months, forfeiture of pay exceeding two-thirds pay per month, or forfeiture of pay for more than six months. A bad-conduct discharge may not be adjudged unless a complete record of the proceedings and testimony before the court has been made.

### **§ 820. Art. 20. Jurisdiction of summary courts-martial**

Subject to section 817 of this title (article 17), summary courts-martial have jurisdiction to try persons subject to this chapter, except officers, cadets, aviation cadets, and midshipmen, for any noncapital offense made punishable by this chapter. No person with respect to whom summary courts-martial have jurisdiction may be brought to trial before a summary court-martial if he objects thereto, unless under section 815 of this title (article 15) he has been permitted and has elected to refuse punishment under that article. If objection to trial by summary court-martial is made by an accused who has not been permitted to refuse punishment under section 815 of this title (article 15), trial shall be ordered by special or general court-martial, as may be appropriate. Summary courts-martial may, under such limitations as the President may prescribe, adjudge any punishment not forbidden by this chapter except death, dismissal, dishonorable or bad-conduct discharge, confinement for more than one month, hard labor without confinement for more than 45 days, restriction to specified limits for

more than two months, or forfeiture of more than two-thirds of one month's pay.

**§ 821. Art. 21. Jurisdiction of courts-martial not exclusive**

The provisions of this chapter conferring jurisdiction upon courts-martial do not deprive military commissions, provost courts, or other military tribunals of concurrent jurisdiction with respect to offenders or offenses that by statute or by the law of war may be tried by military commissions, provost courts, or other military tribunals.

**SUBCHAPTER V.—COMPOSITION OF COURTS-MARTIAL**

Sec. Art.

822. 22. Who may convene general courts-martial.

823. 23. Who may convene special courts-martial.

824. 24. Who may convene summary courts-martial.

825. 25. Who may serve on courts-martial.

826. 26. Law officer of a general court-martial.

827. 27. Detail of trial counsel and defense counsel.

828. 28. Detail or employment of reporters and interpreters.

829. 29. Absent and additional members.

**§ 822. Art. 22. Who may convene general courts-martial**

(a) General courts-martial may be convened by—

(1) the President of the United States;

(2) the Secretary concerned;

(3) the commanding officer of a Territorial Department, an Army Group, an Army, an Army Corps, a division, a separate brigade, or a corresponding unit of the Army or Marine Corps;

(4) the commander in chief of a fleet; the commanding officer of a naval station or larger shore activity of the Navy beyond the United States;

(5) the commanding officer of an air command, an air force, an air division, or a separate wing of the Air Force or Marine Corps;

(6) any other commanding officer designated by the Secretary concerned; or

(7) any other commanding officer in any of the armed forces when empowered by the President.

(b) If any such commanding officer is an accuser, the court shall be convened by superior competent authority, and may in any case be convened by such authority if considered desirable by him.

**§ 823. Art. 23. Who may convene special courts-martial**

(a) Special courts-martial may be convened by—

(1) any person who may convene a general court-martial;

(2) the commanding officer of a district, garrison, fort, camp, station, Air Force base, auxiliary air field, or other place where members of the Army or the Air Force are on duty;

(3) the commanding officer of a brigade, regiment, detached battalion, or corresponding unit of the Army;

(4) the commanding officer of a wing, group, or separate squadron of the Air Force;

(5) the commanding officer of any naval or Coast Guard vessel, shipyard, base, or station; the commanding officer of any Marine

brigade, regiment, detached battalion, or corresponding unit; the commanding officer of any Marine barracks, wing, group, separate squadron, station, base, auxiliary air field, or other place where members of the Marine Corps are on duty;

(6) the commanding officer of any separate or detached command or group of detached units of any of the armed forces placed under a single commander for this purpose; or

(7) the commanding officer or officer in charge of any other command when empowered by the Secretary concerned.

(b) If any such officer is an accuser, the court shall be convened by superior competent authority, and may in any case be convened by such authority if considered advisable by him.

#### **§ 824. Art. 24. Who may convene summary courts-martial**

(a) Summary courts-martial may be convened by—

(1) any person who may convene a general or special court-martial;

(2) the commanding officer of a detached company, or other detachment of the Army;

(3) the commanding officer of a detached squadron or other detachment of the Air Force; or

(4) the commanding officer or officer in charge of any other command when empowered by the Secretary concerned.

(b) When only one commissioned officer is present with a command or detachment he shall be the summary court-martial of that command or detachment and shall hear and determine all summary court-martial cases brought before him. Summary courts-martial may, however, be convened in any case by superior competent authority when considered desirable by him.

#### **§ 825. Art. 25. Who may serve on courts-martial**

(a) Any commissioned officer on active duty is eligible to serve on all courts-martial for the trial of any person who may lawfully be brought before such courts for trial.

(b) Any warrant officer on active duty is eligible to serve on general and special courts-martial for the trial of any person, other than a commissioned officer, who may lawfully be brought before such courts for trial.

(c) (1) Any enlisted member of an armed force on active duty who is not a member of the same unit as the accused is eligible to serve on general and special courts-martial for the trial of any enlisted member of an armed force who may lawfully be brought before such courts for trial, but he shall serve as a member of a court only if, before the convening of the court, the accused personally has requested in writing that enlisted members serve on it. After such a request, the accused may not be tried by a general or special court-martial the membership of which does not include enlisted members in a number comprising at least one-third of the total membership of the court, unless eligible enlisted members cannot be obtained on account of physical conditions or military exigencies. If such members cannot be obtained, the court may be convened and the trial held without them, but the convening authority shall make a detailed written statement, to be appended to the record, stating why they could not be obtained.

(2) In this article, the word "unit" means any regularly organized body as defined by the Secretary concerned, but in no case may it be a body larger than a company, squadron, ship's crew, or body corresponding to one of them.

(d) (1) When it can be avoided, no member of an armed force may be tried by a court-martial any member of which is junior to him in rank or grade.

(2) When convening a court-martial, the convening authority shall detail as members thereof such members of the armed forces as, in his opinion, are best qualified for the duty by reason of age, education, training, experience, length of service, and judicial temperament. No member of an armed force is eligible to serve as a member of a general or special court-martial when he is the accuser or a witness for the prosecution or has acted as investigating officer or as counsel in the same case.

#### **§ 826. Art. 26. Law officer of a general court-martial**

(a) The authority convening a general court-martial shall detail as law officer thereof a commissioned officer who is a member of the bar of a Federal court or of the highest court of a State and who is certified to be qualified for such duty by the Judge Advocate General of the armed force of which he is a member. No person is eligible to act as law officer in a case if he is the accuser or a witness for the prosecution or has acted as investigating officer or as counsel in the same case.

(b) The law officer may not consult with the members of the court, other than on the form of the findings as provided in section 839 of this title (article 39), except in the presence of the accused, trial counsel, and defense counsel, nor may he vote with the members of the court.

#### **§ 827. Art. 27. Detail of trial counsel and defense counsel**

(a) For each general and special court-martial the authority convening the court shall detail trial counsel and defense counsel, and such assistants as he considers appropriate. No person who has acted as investigating officer, law officer, or court member in any case may act later as trial counsel, assistant trial counsel, or, unless expressly requested by the accused, as defense counsel or assistant defense counsel in the same case. No person who has acted for the prosecution may act later in the same case for the defense, nor may any person who has acted for the defense act later in the same case for the prosecution.

(b) Trial counsel or defense counsel detailed for a general court-martial—

(1) must be a judge advocate of the Army or the Air Force, or a law specialist of the Navy or Coast Guard, who is a graduate of an accredited law school or is a member of the bar of a Federal court or of the highest court of a State; or must be a member of the bar of a Federal court or of the highest court of a State; and

(2) must be certified as competent to perform such duties by the Judge Advocate General of the armed force of which he is a member.



(c) In the case of a special court-martial—

(1) if the trial counsel is qualified to act as counsel before a general court-martial, the defense counsel detailed by the convening authority must be a person similarly qualified; and

(2) if the trial counsel is a judge advocate, or a law specialist, or a member of the bar of a Federal court or the highest court of a State, the defense counsel detailed by the convening authority must be one of the foregoing.

#### **§ 828. Art. 28. Detail or employment of reporters and interpreters**

Under such regulations as the Secretary concerned may prescribe, the convening authority of a court-martial, military commission, or court of inquiry shall detail or employ qualified court reporters, who shall record the proceedings of and testimony taken before that court or commission. Under like regulations the convening authority of a court-martial, military commission, or court of inquiry may detail or employ interpreters who shall interpret for the court or commission.

#### **§ 829. Art. 29. Absent and additional members**

(a) No member of a general or special court-martial may be absent or excused after the accused has been arraigned except for physical disability or as a result of a challenge or by order of the convening authority for good cause.

(b) Whenever a general court-martial is reduced below five members, the trial may not proceed unless the convening authority details new members sufficient in number to provide not less than five members. When the new members have been sworn, the trial may proceed after the recorded testimony of each witness previously examined has been read to the court in the presence of the law officer, the accused, and counsel.

(c) Whenever a special court-martial is reduced below three members, the trial may not proceed unless the convening authority details new members sufficient in number to provide not less than three members. When the new members have been sworn, the trial shall proceed as if no evidence had previously been introduced, unless a verbatim record of the testimony of previously examined witnesses or a stipulation thereof is read to the court in the presence of the accused and counsel.

### **SUBCHAPTER VI.—PRE-TRIAL PROCEDURE**

Sec. Art.

830. 30. Charges and specifications.

831. 31. Compulsory self-incrimination prohibited.

832. 32. Investigation.

833. 33. Forwarding of charges.

834. 34. Advice of staff judge advocate and reference for trial.

835. 35. Service of charges.

#### **§ 830. Art. 30. Charges and specifications**

(a) Charges and specifications shall be signed by a person subject to this chapter under oath before a commissioned officer of the armed forces authorized to administer oaths and shall state—

(1) that the signer has personal knowledge of, or has investigated, the matters set forth therein; and

(2) that they are true in fact to the best of his knowledge and belief.

(b) Upon the preferring of charges, the proper authority shall take immediate steps to determine what disposition should be made thereof in the interest of justice and discipline, and the person accused shall be informed of the charges against him as soon as practicable.

**§ 831. Art. 31. Compulsory self-incrimination prohibited**

(a) No person subject to this chapter may compel any person to incriminate himself or to answer any question the answer to which may tend to incriminate him.

(b) No person subject to this chapter may interrogate, or request any statement from, an accused or a person suspected of an offense without first informing him of the nature of the accusation and advising him that he does not have to make any statement regarding the offense of which he is accused or suspected and that any statement made by him may be used as evidence against him in a trial by court-martial.

(c) No person subject to this chapter may compel any person to make a statement or produce evidence before any military tribunal if the statement or evidence is not material to the issue and may tend to degrade him.

(d) No statement obtained from any person in violation of this article, or through the use of coercion, unlawful influence, or unlawful inducement may be received in evidence against him in a trial by court-martial.

**§ 832. Art. 32. Investigation**

(a) No charge or specification may be referred to a general court-martial for trial until a thorough and impartial investigation of all the matters set forth therein has been made. This investigation shall include inquiry as to the truth of the matter set forth in the charges, consideration of the form of charges, and a recommendation as to the disposition which should be made of the case in the interest of justice and discipline.

(b) The accused shall be advised of the charges against him and of his right to be represented at that investigation by counsel. Upon his own request he shall be represented by civilian counsel if provided by him, or military counsel of his own selection if such counsel is reasonably available, or by counsel detailed by the officer exercising general court-martial jurisdiction over the command. At that investigation full opportunity shall be given to the accused to cross-examine witnesses against him if they are available and to present anything he may desire in his own behalf, either in defense or mitigation, and the investigating officer shall examine available witnesses requested by the accused. If the charges are forwarded after the investigation, they shall be accompanied by a statement of the substance of the testimony taken on both sides and a copy thereof shall be given to the accused.

(c) If an investigation of the subject matter of an offense has been conducted before the accused is charged with the offense, and if the accused was present at the investigation and afforded the opportunities for representation, cross-examination, and presentation prescribed in subsection (b), no further investigation of that charge is necessary

under this article unless it is demanded by the accused after he is informed of the charge. A demand for further investigation entitles the accused to recall witnesses for further cross-examination and to offer any new evidence in his own behalf.

(d) The requirements of this article are binding on all persons administering this chapter but failure to follow them does not constitute jurisdictional error.

### § 833. Art. 33. Forwarding of charges

When a person is held for trial by general court-martial the commanding officer shall, within eight days after the accused is ordered into arrest or confinement, if practicable, forward the charges, together with the investigation and allied papers, to the officer exercising general court-martial jurisdiction. If that is not practicable, he shall report in writing to that officer the reasons for delay.

### § 834. Art. 34. Advice of staff judge advocate and reference for trial

(a) Before directing the trial of any charge by general court-martial, the convening authority shall refer it to his staff judge advocate or legal officer for consideration and advice. The convening authority may not refer a charge to a general court-martial for trial unless he has found that the charge alleges an offense under this chapter and is warranted by evidence indicated in the report of investigation.

(b) If the charges or specifications are not formally correct or do not conform to the substance of the evidence contained in the report of the investigating officer, formal corrections, and such changes in the charges and specifications as are needed to make them conform to the evidence, may be made.

### § 835. Art. 35. Service of charges

The trial counsel to whom court-martial charges are referred for trial shall cause to be served upon the accused a copy of the charges upon which trial is to be had. In time of peace no person may, against his objection, be brought to trial before a general court-martial within a period of five days after the service of the charges upon him, or before a special court-martial within a period of three days after the service of the charges upon him.

## SUBCHAPTER VII.—TRIAL PROCEDURE

### Sec. Art.

- 836. 36. President may prescribe rules.
- 837. 37. Unlawfully influencing action of court.
- 838. 38. Duties of trial counsel and defense counsel.
- 839. 39. Sessions.
- 840. 40. Continuances.
- 841. 41. Challenges.
- 842. 42. Oaths.
- 843. 43. Statute of limitations.
- 844. 44. Former jeopardy.
- 845. 45. Pleas of the accused.
- 846. 46. Opportunity to obtain witnesses and other evidence.
- 847. 47. Refusal to appear or testify.
- 848. 48. Contempts.
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Sec. Art.

850. 50. Admissibility of records of courts of inquiry.

851. 51. Voting and rulings.

852. 52. Number of votes required.

853. 53. Court to announce action.

854. 54. Record of trial.

### **§ 836. Art. 36. President may prescribe rules**

(a) The procedure, including modes of proof, in cases before courts-martial, courts of inquiry, military commissions, and other military tribunals may be prescribed by the President by regulations which shall, so far as he considers practicable, apply the principles of law and the rules of evidence generally recognized in the trial of criminal cases in the United States district courts, but which may not be contrary to or inconsistent with this chapter.

(b) All rules and regulations made under this article shall be uniform insofar as practicable and shall be reported to Congress.

### **§ 837. Art. 37. Unlawfully influencing action of court**

No authority convening a general, special, or summary court-martial, nor any other commanding officer, may censure, reprimand, or admonish the court or any member, law officer, or counsel thereof, with respect to the findings or sentence adjudged by the court, or with respect to any other exercise of its or his functions in the conduct of the proceeding. No person subject to this chapter may attempt to coerce or, by any unauthorized means, influence the action of a court-martial or any other military tribunal or any member thereof, in reaching the findings or sentence in any case, or the action of any convening, approving, or reviewing authority with respect to his judicial acts.

### **§ 838. Art. 38. Duties of trial counsel and defense counsel**

(a) The trial counsel of a general or special court-martial shall prosecute in the name of the United States, and shall, under the direction of the court, prepare the record of the proceedings.

(b) The accused has the right to be represented in his defense before a general or special court-martial by civilian counsel if provided by him, or by military counsel of his own selection if reasonably available, or by the defense counsel detailed under section 827 of this title (article 27). Should the accused have counsel of his own selection, the defense counsel, and assistant defense counsel, if any, who were detailed, shall, if the accused so desires, act as his associate counsel; otherwise they shall be excused by the president of the court.

(c) In every court-martial proceeding, the defense counsel may, in the event of conviction, forward for attachment to the record of proceedings a brief of such matters as he feels should be considered in behalf of the accused on review, including any objection to the contents of the record which he considers appropriate.

(d) An assistant trial counsel of a general court-martial may, under the direction of the trial counsel or when he is qualified to be a trial counsel as required by section 827 of this title (article 27), perform any duty imposed by law, regulation, or the custom of the service upon the trial counsel of the court. An assistant trial counsel of a special court-martial may perform any duty of the trial counsel.



(e) An assistant defense counsel of a general or special court-martial may, under the direction of the defense counsel or when he is qualified to be the defense counsel as required by section 827 of this title (article 27), perform any duty imposed by law, regulation, or the custom of the service upon counsel for the accused.

#### **§ 839. Art. 39. Sessions**

When a general or special court-martial deliberates or votes, only the members of the court may be present. After a general court-martial has finally voted on the findings, the court may request the law officer and the reporter to appear before the court to put the findings in proper form, and those proceedings shall be on the record. All other proceedings, including any other consultation of the court with counsel or the law officer, shall be made a part of the record and shall be in the presence of the accused, the defense counsel, the trial counsel, and in general court-martial cases, the law officer.

#### **§ 840. Art. 40. Continuances**

A court-martial may, for reasonable cause, grant a continuance to any party for such time, and as often, as may appear to be just.

#### **§ 841. Art. 41. Challenges**

(a) Members of a general or special court-martial and the law officer of a general court-martial may be challenged by the accused or the trial counsel for cause stated to the court. The court shall determine the relevancy and validity of challenges for cause, and may not receive a challenge to more than one person at a time. Challenges by the trial counsel shall ordinarily be presented and decided before those by the accused are offered.

(b) Each accused and the trial counsel is entitled to one peremptory challenge, but the law officer may not be challenged except for cause.

#### **§ 842. Art. 42. Oaths**

(a) The law officer, interpreters, and, in general and special courts-martial, members, trial counsel, assistant trial counsel, defense counsel, assistant defense counsel, and reporters shall take an oath in the presence of the accused to perform their duties faithfully.

(b) Each witness before a court-martial shall be examined on oath.

#### **§ 843. Art. 43. Statute of limitations**

(a) A person charged with desertion or absence without leave in time of war, or with aiding the enemy, mutiny, or murder, may be tried and punished at any time without limitation.

(b) Except as otherwise provided in this article, a person charged with desertion in time of peace or any of the offenses punishable under sections 919-932 of this title (articles 119-132) is not liable to be tried by court-martial if the offense was committed more than three years before the receipt of sworn charges and specifications by an officer exercising summary court-martial jurisdiction over the command.

(c) Except as otherwise provided in this article, a person charged with any offense is not liable to be tried by court-martial or punished under section 815 of this title (article 15) if the offense was committed more than two years before the receipt of sworn charges and speci-

fications by an officer exercising summary court-martial jurisdiction over the command or before the imposition of punishment under section 815 of this title (article 15).

(d) Periods in which the accused was absent from territory in which the United States has the authority to apprehend him, or in the custody of civil authorities, or in the hands of the enemy, shall be excluded in computing the period of limitation prescribed in this article.

(e) For an offense the trial of which in time of war is certified to the President by the Secretary concerned to be detrimental to the prosecution of the war or inimical to the national security, the period of limitation prescribed in this article is extended to six months after the termination of hostilities as proclaimed by the President or by a joint resolution of Congress.

(f) When the United States is at war, the running of any statute of limitations applicable to any offense under this chapter—

(1) involving fraud or attempted fraud against the United States or any agency thereof in any manner, whether by conspiracy or not;

(2) committed in connection with the acquisition, care, handling, custody, control, or disposition of any real or personal property of the United States; or

(3) committed in connection with the negotiation, procurement, award, performance, payment, interim financing, cancellation, or other termination or settlement, of any contract, subcontract, or purchase order which is connected with or related to the prosecution of the war, or with any disposition of termination inventory by any war contractor or Government agency;

is suspended until three years after the termination of hostilities as proclaimed by the President or by a joint resolution of Congress.

#### **§ 844. Art. 44. Former jeopardy**

(a) No person may, without his consent, be tried a second time for the same offense.

(b) No proceeding in which an accused has been found guilty by a court-martial upon any charge or specification is a trial in the sense of this article until the finding of guilty has become final after review of the case has been fully completed.

(c) A proceeding which, after the introduction of evidence but before a finding, is dismissed or terminated by the convening authority or on motion of the prosecution for failure of available evidence or witnesses without any fault of the accused is a trial in the sense of this article.

#### **§ 845. Art. 45. Pleas of the accused**

(a) If an accused arraigned before a court-martial makes an irregular pleading, or after a plea of guilty sets up matter inconsistent with the plea, or if it appears that he has entered the plea of guilty improvidently or through lack of understanding of its meaning and effect, or if he fails or refuses to plead, a plea of not guilty shall be entered in the record, and the court shall proceed as though he had pleaded not guilty.

(b) A plea of guilty by the accused may not be received to any charge or specification alleging an offense for which the death penalty may be adjudged.

#### **§ 846. Art. 46. Opportunity to obtain witnesses and other evidence**

The trial counsel, the defense counsel, and the court-martial shall have equal opportunity to obtain witnesses and other evidence in accordance with such regulations as the President may prescribe. Process issued in court-martial cases to compel witnesses to appear and testify and to compel the production of other evidence shall be similar to that which courts of the United States having criminal jurisdiction may lawfully issue and shall run to any part of the United States, or the Territories, Commonwealths, and possessions.

#### **§ 847. Art. 47. Refusal to appear or testify**

(a) Any person not subject to this chapter who—

(1) has been duly subpoenaed to appear as a witness before a court-martial, military commission, court of inquiry, or any other military court or board, or before any military or civil officer designated to take a deposition to be read in evidence before such a court, commission, or board;

(2) has been duly paid or tendered the fees and mileage of a witness at the rates allowed to witnesses attending the courts of the United States; and

(3) willfully neglects or refuses to appear, or refuses to qualify as a witness or to testify or to produce any evidence which that person may have been legally subpoenaed to produce; is guilty of an offense against the United States.

(b) Any person who commits an offense named in subsection (a) shall be tried on information in a United States district court or in a court of original criminal jurisdiction in any of the Territories, Commonwealths, or possessions of the United States, and jurisdiction is conferred upon those courts for that purpose. Upon conviction, such a person shall be punished by a fine of not more than \$500, or imprisonment for not more than six months, or both.

(c) The United States attorney or the officer prosecuting for the United States in any such court of original criminal jurisdiction shall, upon the certification of the facts to him by the military court, commission, court of inquiry, or board, file an information against and prosecute any person violating this article.

(d) The fees and mileage of witnesses shall be advanced or paid out of the appropriations for the compensation of witnesses.

#### **§ 848. Art. 48. Contempts**

A court-martial, provost court, or military commission may punish for contempt any person who uses any menacing word, sign, or gesture in its presence, or who disturbs its proceedings by any riot or disorder. The punishment may not exceed confinement for 30 days or a fine of \$100, or both.

#### **§ 849. Art. 49. Depositions**

(a) At any time after charges have been signed as provided in section 830 of this title (article 30), any party may take oral or written depositions unless an authority competent to convene a court-martial for the trial of those charges forbids it for good cause. If a deposition is to be taken before charges are referred for trial, such an

authority may designate commissioned officers to represent the prosecution and the defense and may authorize those officers to take the deposition of any witness.

(b) The party at whose instance a deposition is to be taken shall give to every other party reasonable written notice of the time and place for taking the deposition.

(c) Depositions may be taken before and authenticated by any military or civil officer authorized by the laws of the United States or by the laws of the place where the deposition is taken to administer oaths.

(d) A duly authenticated deposition taken upon reasonable notice to the other parties, so far as otherwise admissible under the rules of evidence, may be read in evidence before any military court or commission in any case not capital, or in any proceeding before a court of inquiry or military board, if it appears—

(1) that the witness resides or is beyond the State, Territory, Commonwealth, or District of Columbia in which the court, commission, or board is ordered to sit, or beyond 100 miles from the place of trial or hearing;

(2) that the witness by reason of death, age, sickness, bodily infirmity, imprisonment, military necessity, nonamenability to process, or other reasonable cause, is unable or refuses to appear and testify in person at the place of trial or hearing; or

(3) that the present whereabouts of the witness is unknown.

(e) Subject to subsection (d), testimony by deposition may be presented by the defense in capital cases.

(f) Subject to subsection (d), a deposition may be read in evidence in any case in which the death penalty is authorized but is not mandatory, whenever the convening authority directs that the case be treated as not capital, and in such a case a sentence of death may not be adjudged by the court-martial.

#### **§ 850. Art. 50. Admissibility of records of courts of inquiry**

(a) In any case not capital and not extending to the dismissal of a commissioned officer, the sworn testimony, contained in the duly authenticated record of proceedings of a court of inquiry, of a person whose oral testimony cannot be obtained, may, if otherwise admissible under the rules of evidence, be read in evidence by any party before a court-martial or military commission if the accused was a party before the court of inquiry and if the same issue was involved or if the accused consents to the introduction of such evidence.

(b) Such testimony may be read in evidence only by the defense in capital cases or cases extending to the dismissal of a commissioned officer.

(c) Such testimony may also be read in evidence before a court of inquiry or a military board.

#### **§ 851. Art. 51. Voting and rulings**

(a) Voting by members of a general or special court-martial upon questions of challenge, on the findings, and on the sentence shall be by secret written ballot. The junior member of the court shall count the votes. The count shall be checked by the president, who shall forthwith announce the result of the ballot to the members of the court.



(b) The law officer of a general court-martial and the president of a special court-martial shall rule upon interlocutory questions, other than challenge, arising during the proceedings. Any such ruling made by the law officer of a general court-martial upon any interlocutory question other than a motion for a finding of not guilty, or the question of accused's sanity, is final and constitutes the ruling of the court. However, the law officer may change his ruling at any time during the trial. Unless the ruling is final, if any member objects thereto, the court shall be cleared and closed and the question decided by a voice vote as provided in section 852 of this title (article 52), beginning with the junior in rank.

(c) Before a vote is taken on the findings, the law officer of a general court-martial and the president of a special court-martial shall, in the presence of the accused and counsel, instruct the court as to the elements of the offense and charge the court—

(1) that the accused must be presumed to be innocent until his guilt is established by legal and competent evidence beyond reasonable doubt;

(2) that in the case being considered, if there is a reasonable doubt as to the guilt of the accused, the doubt must be resolved in favor of the accused and he must be acquitted;

(3) that, if there is a reasonable doubt as to the degree of guilt, the finding must be in a lower degree as to which there is no reasonable doubt; and

(4) that the burden of proof to establish the guilt of the accused beyond reasonable doubt is upon the United States.

#### § 852. Art. 52. Number of votes required

(a) (1) No person may be convicted of an offense for which the death penalty is made mandatory by law, except by the concurrence of all the members of the court-martial present at the time the vote is taken.

(2) No person may be convicted of any other offense, except by the concurrence of two-thirds of the members present at the time the vote is taken.

(b) (1) No person may be sentenced to suffer death, except by the concurrence of all the members of the court-martial present at the time the vote is taken and for an offense in this chapter expressly made punishable by death.

(2) No person may be sentenced to life imprisonment or to confinement for more than ten years, except by the concurrence of three-fourths of the members present at the time the vote is taken.

(3) All other sentences shall be determined by the concurrence of two-thirds of the members present at the time the vote is taken.

(c) All other questions to be decided by the members of a general or special court-martial shall be determined by a majority vote. A tie vote on a challenge disqualifies the member challenged. A tie vote on a motion for a finding of not guilty or on a motion relating to the question of the accused's sanity is a determination against the accused. A tie vote on any other question is a determination in favor of the accused.

**§ 853. Art. 53. Court to announce action**

A court-martial shall announce its findings and sentence to the parties as soon as determined.

**§ 854. Art. 54. Record of trial**

(a) Each general court-martial shall keep a separate record of the proceedings of the trial of each case brought before it, and the record shall be authenticated by the signatures of the president and the law officer. If the record cannot be authenticated by either the president or the law officer, by reason of his death, disability, or absence, it shall be signed by a member in lieu of him. If both the president and the law officer are unavailable for any of those reasons, the record shall be authenticated by two members.

(b) Each special and summary court-martial shall keep a separate record of the proceedings in each case, and the record shall contain the matter and shall be authenticated in the manner required by such regulations as the President may prescribe.

(c) A copy of the record of the proceedings of each general and special court-martial shall be given to the accused as soon as it is authenticated.

**SUBCHAPTER VIII.—SENTENCES**

Sec. Art.

855. 55. Cruel and unusual punishments prohibited.

856. 56. Maximum limits.

857. 57. Effective date of sentences.

858. 58. Execution of confinement.

**§ 855. Art. 55. Cruel and unusual punishments prohibited**

Punishment by flogging, or by branding, marking, or tattooing on the body, or any other cruel or unusual punishment, may not be adjudged by any court-martial or inflicted upon any person subject to this chapter. The use of irons, single or double, except for the purpose of safe custody, is prohibited.

**§ 856. Art. 56. Maximum limits**

The punishment which a court-martial may direct for an offense may not exceed such limits as the President may prescribe for that offense.

**§ 857. Art. 57. Effective date of sentences**

(a) Whenever a sentence of a court-martial as lawfully adjudged and approved includes a forfeiture of pay or allowances in addition to confinement not suspended, the forfeiture may apply to pay or allowances becoming due on or after the date the sentence is approved by the convening authority. No forfeiture may extend to any pay or allowances accrued before that date.

(b) Any period of confinement included in a sentence of a court-martial begins to run from the date the sentence is adjudged by the court-martial, but periods during which the sentence to confinement is suspended shall be excluded in computing the service of the term of confinement.

(c) All other sentences of courts-martial are effective on the date ordered executed.

## **§ 858. Art. 58. Execution of confinement**

(a) Under such instructions as the Secretary concerned may prescribe, a sentence of confinement adjudged by a court-martial or other military tribunal, whether or not the sentence includes discharge or dismissal, and whether or not the discharge or dismissal has been executed, may be carried into execution by confinement in any place of confinement under the control of any of the armed forces or in any penal or correctional institution under the control of the United States, or which the United States may be allowed to use. Persons so confined in a penal or correctional institution not under the control of one of the armed forces are subject to the same discipline and treatment as persons confined or committed by the courts of the United States or of the State, Territory, District of Columbia, or place in which the institution is situated.

(b) The omission of the words "hard labor" from any sentence of a court-martial adjudging confinement does not deprive the authority executing that sentence of the power to require hard labor as a part of the punishment.

## **SUBCHAPTER IX.—REVIEW OF COURTS-MARTIAL**

Sec. Art.

- 859. 59. Error of law ; lesser included offense.
- 860. 60. Initial action on the record.
- 861. 61. Same—General court-martial records.
- 862. 62. Reconsideration and revision.
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- 875. 75. Restoration.
- 876. 76. Finality of proceedings, findings, and sentences.

## **§ 859. Art. 59. Error of law ; lesser included offense**

(a) A finding or sentence of a court-martial may not be held incorrect on the ground of an error of law unless the error materially prejudices the substantial rights of the accused.

(b) Any reviewing authority with the power to approve or affirm a finding of guilty may approve or affirm, instead, so much of the finding as includes a lesser included offense.

## **§ 860. Art. 60. Initial action on the record**

After a trial by court-martial the record shall be forwarded to the convening authority, and action thereon may be taken by the person who convened the court, a commissioned officer commanding for the time being, a successor in command, or any officer exercising general court-martial jurisdiction.

**§ 861. Art. 61. Same—General court-martial records**

The convening authority shall refer the record of each general court-martial to his staff judge advocate or legal officer, who shall submit his written opinion thereon to the convening authority. If the final action of the court has resulted in an acquittal of all charges and specifications, the opinion shall be limited to questions of jurisdiction and shall be forwarded with the record to the Judge Advocate General of the armed force of which the accused is a member.

**§ 862. Art. 62. Reconsideration and revision**

(a) If a specification before a court-martial has been dismissed on motion and the ruling does not amount to a finding of not guilty, the convening authority may return the record to the court for reconsideration of the ruling and any further appropriate action.

(b) Where there is an apparent error or omission in the record or where the record shows improper or inconsistent action by a court-martial with respect to a finding or sentence which can be rectified without material prejudice to the substantial rights of the accused, the convening authority may return the record to the court for appropriate action. In no case, however, may the record be returned—

(1) for reconsideration of a finding of not guilty of any specification, or a ruling which amounts to a finding of not guilty;

(2) for reconsideration of a finding of not guilty of any charge, unless the record shows a finding of guilty under a specification laid under that charge, which sufficiently alleges a violation of some article of this chapter; or

(3) for increasing the severity of the sentence unless the sentence prescribed for the offense is mandatory.

**§ 863. Art. 63. Rehearings**

(a) If the convening authority disapproves the findings and sentence of a court-martial he may, except where there is lack of sufficient evidence in the record to support the findings, order a rehearing. In such a case he shall state the reasons for disapproval. If he disapproves the findings and sentence and does not order a rehearing, he shall dismiss the charges.

(b) Each rehearing shall take place before a court-martial composed of members not members of the court-martial which first heard the case. Upon a rehearing the accused may not be tried for any offense of which he was found not guilty by the first court-martial, and no sentence in excess of or more severe than the original sentence may be imposed, unless the sentence is based upon a finding of guilty of an offense not considered upon the merits in the original proceedings, or unless the sentence prescribed for the offense is mandatory.

**§ 864. Art. 64. Approval by the convening authority**

In acting on the findings and sentence of a court-martial, the convening authority may approve only such findings of guilty, and the sentence or such part or amount of the sentence, as he finds correct in law and fact and as he in his discretion determines should be approved. Unless he indicates otherwise, approval of the sentence is approval of the findings and sentence.



**§ 865. Art. 65. Disposition of records after review by the convening authority**

(a) When the convening authority has taken final action in a general court-martial case, he shall send the entire record, including his action thereon and the opinion or opinions of the staff judge advocate or legal officer, to the appropriate Judge Advocate General.

(b) If the sentence of a special court-martial as approved by the convening authority includes a bad-conduct discharge, whether or not suspended, the record shall be sent to the officer exercising general court-martial jurisdiction over the command to be reviewed in the same manner as a record of trial by general court-martial or directly to the appropriate Judge Advocate General to be reviewed by a board of review. If the sentence as approved by an officer exercising general court-martial jurisdiction includes a bad-conduct discharge, whether or not suspended, the record shall be sent to the appropriate Judge Advocate General to be reviewed by a board of review.

(c) All other special and summary court-martial records shall be reviewed by a judge advocate of the Army or the Air Force, a law specialist of the Navy, or a law specialist or lawyer of the Coast Guard or Department of the Treasury, and shall be transmitted and disposed of as the Secretary concerned may prescribe by regulation.

**§ 866. Art. 66. Review by board of review**

(a) Each Judge Advocate General shall constitute in his office one or more boards of review, each composed of not less than three commissioned officers or civilians, each of whom must be a member of the bar of a Federal court or of the highest court of a State.

(b) The Judge Advocate General shall refer to a board of review the record in every case of trial by court-martial in which the sentence, as approved, affects a general or flag officer or extends to death, dismissal of a commissioned officer, cadet, or midshipman, dishonorable or bad-conduct discharge, or confinement for one year or more.

(c) In a case referred to it, the board of review may act only with respect to the findings and sentence as approved by the convening authority. It may affirm only such findings of guilty, and the sentence or such part or amount of the sentence, as it finds correct in law and fact and determines, on the basis of the entire record, should be approved. In considering the record, it may weigh the evidence, judge the credibility of witnesses, and determine controverted questions of fact, recognizing that the trial court saw and heard the witnesses.

(d) If the board of review sets aside the findings and sentence, it may, except where the setting aside is based on lack of sufficient evidence in the record to support the findings, order a rehearing. If it sets aside the findings and sentence and does not order a rehearing, it shall order that the charges be dismissed.

(e) The Judge Advocate General shall, unless there is to be further action by the President, the Secretary concerned, or the Court of Military Appeals, instruct the convening authority to take action in accordance with the decision of the board of review. If the board of review has ordered a rehearing but the convening authority finds a rehearing impracticable, he may dismiss the charges.

(f) The Judge Advocates General shall prescribe uniform rules of procedure for boards of review and shall meet periodically to formulate policies and procedure in regard to review of court-martial cases in the offices of the Judge Advocates General and by boards of review.

**§ 867. Art. 67. Review by the Court of Military Appeals**

(a) (1) There is a Court of Military Appeals, located for administrative purposes in the Department of Defense. The Court of Military Appeals consists of three judges appointed from civil life by the President, by and with the advice and consent of the Senate, for a term of fifteen years. Not more than two of the judges of that court may be appointed from the same political party, nor is any person eligible for appointment to the court who is not a member of the bar of a Federal court or of the highest court of a State. Each judge is entitled to a salary of \$25,500 a year and is eligible for reappointment. The President shall designate from time to time one of the judges to act as Chief Judge. The Court of Military Appeals may prescribe its own rules of procedure and determine the number of judges required to constitute a quorum. A vacancy in the court does not impair the right of the remaining judges to exercise the powers of the court. Upon his certificate, each judge is entitled to be paid by the Secretary of Defense (1) all necessary traveling expenses, and (2) his reasonable maintenance expenses, but not more than \$15 a day, incurred while attending court or transacting official business outside the District of Columbia.

(2) The terms of office of the three judges first taking office after February 28, 1951, expire, as designated by the President at the time of nomination, one on May 1, 1956, one on May 1, 1961, and one on May 1, 1966. The terms of office of all successors expire 15 years after the expiration of the terms for which their predecessors were appointed, but any judge appointed to fill a vacancy occurring before the expiration of the term for which his predecessor was appointed may be appointed only for the unexpired term of his predecessor.

(3) Judges of the Court of Military Appeals may be removed by the President, upon notice and hearing, for neglect of duty or malfeasance in office, or for mental or physical disability, but for no other cause.

(4) If a Judge of the Court of Military Appeals is temporarily unable to perform his duties because of illness or other disability, the President may designate a judge of a United States Court of Appeals to fill the office for the period of disability.

(b) The Court of Military Appeals shall review the record in—

(1) all cases in which the sentence, as affirmed by a board of review, affects a general or flag officer or extends to death;

(2) all cases reviewed by a board of review which the Judge Advocate General orders sent to the Court of Military Appeals for review; and

(3) all cases reviewed by a board of review in which, upon petition of the accused and on good cause shown, the Court of Military Appeals has granted a review.

(c) The accused has 30 days from the time when he is notified of the decision of a board of review to petition the Court of Military Appeals for review. The court shall act upon such a petition within 30 days of the receipt thereof.

(d) In any case reviewed by it, the Court of Military Appeals may act only with respect to the findings and sentence as approved by the convening authority and as affirmed or set aside as incorrect in law by the board of review. In a case which the Judge Advocate General orders sent to the Court of Military Appeals, that action need be taken only with respect to the issues raised by him. In a case reviewed upon petition of the accused, that action need be taken only with respect to issues specified in the grant of review. The Court of Military Appeals shall take action only with respect to matters of law.

(e) If the Court of Military Appeals sets aside the findings and sentence, it may, except where the setting aside is based on lack of sufficient evidence in the record to support the findings, order a rehearing. If it sets aside the findings and sentence and does not order a rehearing, it shall order that the charges be dismissed.

(f) After it has acted on a case, the Court of Military Appeals may direct the Judge Advocate General to return the record to the board of review for further review in accordance with the decision of the court. Otherwise, unless there is to be further action by the President or the Secretary concerned, the Judge Advocate General shall instruct the convening authority to take action in accordance with that decision. If the court has ordered a rehearing, but the convening authority finds a rehearing impracticable, he may dismiss the charges.

(g) The Court of Military Appeals and the Judge Advocates General shall meet annually to make a comprehensive survey of the operation of this chapter and report to the Committees on Armed Services of the Senate and of the House of Representatives and to the Secretary of Defense, the Secretaries of the military departments, and the Secretary of the Treasury, the number and status of pending cases and any recommendations relating to uniformity of policies as to sentences, amendments to this chapter, and any other matters considered appropriate.

#### **§ 868. Art. 68. Branch offices**

Whenever the President considers such action necessary, he may direct the Judge Advocate General to establish a branch office, under an Assistant Judge Advocate General, with any distant command, and to establish in that branch office one or more boards of review. That Assistant Judge Advocate General and any such board of review may perform for that command, under the general supervision of the Judge Advocate General, the respective duties which the Judge Advocate General and a board of review in his office would otherwise be required to perform in respect of all cases involving sentences not requiring approval by the President.

#### **§ 869. Art. 69. Review in the office of the Judge Advocate General**

Every record of trial by general court-martial, in which there has been a finding of guilty and a sentence, the appellate review of which is not otherwise provided for by section 866 of this title (article 66), shall be examined in the office of the Judge Advocate General. If any part of the findings or sentence is found unsupported in law, or if the Judge Advocate General so directs, the record shall be reviewed by a board of review in accordance with section 866 of this title (article 66), but in that event there may be no further review by the

Court of Military Appeals except under section 867 (b) (2) of this title (article 67 (b) (2)).

**§ 870. Art. 70. Appellate counsel**

(a) The Judge Advocate General shall detail in his office one or more commissioned officers as appellate Government counsel, and one or more commissioned officers as appellate defense counsel, who are qualified under section 827 (b) (1) of this title (article 27 (b) (1)).

(b) Appellate Government counsel shall represent the United States before the board of review or the Court of Military Appeals when directed to do so by the Judge Advocate General.

(c) Appellate defense counsel shall represent the accused before the board of review or the Court of Military Appeals—

(1) when he is requested to do so by the accused;

(2) when the United States is represented by counsel; or

(3) when the Judge Advocate General has sent a case to the Court of Military Appeals.

(d) The accused has the right to be represented before the Court of Military Appeals or the board of review by civilian counsel if provided by him.

(e) Military appellate counsel shall also perform such other functions in connection with the review of court martial cases as the Judge Advocate General directs.

**§ 871. Art. 71. Execution of sentence; suspension of sentence**

(a) No court-martial sentence extending to death or involving a general or flag officer may be executed until approved by the President. He shall approve the sentence or such part, amount, or commuted form of the sentence as he sees fit, and may suspend the execution of the sentence or any part of the sentence, as approved by him, except a death sentence.

(b) No sentence extending to the dismissal of a commissioned officer (other than a general or flag officer), cadet, or midshipman may be executed until approved by the Secretary concerned, or such Under Secretary or Assistant Secretary as may be designated by him. He shall approve the sentence or such part, amount, or commuted form of the sentence as he sees fit, and may suspend the execution of any part of the sentence as approved by him. In time of war or national emergency he may commute a sentence of dismissal to reduction to any enlisted grade. A person so reduced may be required to serve for the duration of the war or emergency and six months thereafter.

(c) No sentence which includes, unsuspended, a dishonorable or bad-conduct discharge, or confinement for one year or more, may be executed until affirmed by a board of review and, in cases reviewed by it, the Court of Military Appeals.

(d) All other court-martial sentences, unless suspended, may be ordered executed by the convening authority when approved by him. The convening authority may suspend the execution of any sentence, except a death sentence.



### **§ 872. Art. 72. Vacation of suspension**

(a) Before the vacation of the suspension of a special court-martial sentence which as approved includes a bad-conduct discharge, or of any general court-martial sentence, the officer having special court-martial jurisdiction over the probationer shall hold a hearing on the alleged violation of probation. The probationer shall be represented at the hearing by counsel if he so desires.

(b) The record of the hearing and the recommendation of the officer having special court-martial jurisdiction shall be sent for action to the officer exercising general court-martial jurisdiction over the probationer. If he vacates the suspension, any unexecuted part of the sentence, except a dismissal, shall be executed, subject to applicable restrictions in section 871 (c) of this title (article 71 (c)). The vacation of the suspension of a dismissal is not effective until approved by the Secretary concerned.

(c) The suspension of any other sentence may be vacated by any authority competent to convene, for the command in which the accused is serving or assigned, a court of the kind that imposed the sentence.

### **§ 873. Art. 73. Petition for a new trial**

At any time within one year after approval by the convening authority of a court-martial sentence which extends to death, dismissal, dishonorable or bad-conduct discharge, or confinement for one year or more, the accused may petition the Judge Advocate General for a new trial on the ground of newly discovered evidence or fraud on the court. If the accused's case is pending before the board of review or before the Court of Military Appeals, the Judge Advocate General shall refer the petition to the board or court, as the case may be, for action. Otherwise the Judge Advocate General shall act upon the petition.

### **§ 874. Art. 74. Remission and suspension**

(a) The Secretary concerned and, when designated by him, any Under Secretary, Assistant Secretary, Judge Advocate General, or commanding officer may remit or suspend any part or amount of the unexecuted part of any sentence, including all uncollected forfeitures other than a sentence approved by the President.

(b) The Secretary concerned may, for good cause, substitute an administrative form of discharge for a discharge or dismissal executed in accordance with the sentence of a court-martial.

### **§ 875. Art. 75. Restoration**

(a) Under such regulations as the President may prescribe, all rights, privileges, and property affected by an executed part of a court-martial sentence which has been set aside or disapproved, except an executed dismissal or discharge, shall be restored unless a new trial or rehearing is ordered and such executed part is included in a sentence imposed upon the new trial or rehearing.

(b) If a previously executed sentence of dishonorable or bad-conduct discharge is not imposed on a new trial, the Secretary concerned shall substitute therefor a form of discharge authorized for administrative issuance unless the accused is to serve out the remainder of his enlistment.

(c) If a previously executed sentence of dismissal is not imposed on a new trial, the Secretary concerned shall substitute therefor a form of discharge authorized for administrative issue, and the commissioned officer dismissed by that sentence may be reappointed by the President alone to such commissioned grade and with such rank as in the opinion of the President that former officer would have attained had he not been dismissed. The reappointment of such a former officer shall be without regard to the existence of a vacancy and shall affect the promotion status of other officers only insofar as the President may direct. All time between the dismissal and the reappointment shall be considered as actual service for all purposes, including the right to pay and allowances.

#### § 876. Art. 76. Finality of proceedings, findings, and sentences

The appellate review of records of trial provided by this chapter, the proceedings, findings, and sentences of courts-martial as approved, reviewed, or affirmed as required by this chapter, and all dismissals and discharges carried into execution under sentences by courts-martial following approval, review, or affirmation as required by this chapter, are final and conclusive. Orders publishing the proceedings of courts-martial and all action taken pursuant to those proceedings are binding upon all departments, courts, agencies, and officers of the United States, subject only to action upon a petition for a new trial as provided in section 873 of this title (article 73) and to action by the Secretary concerned as provided in section 874 of this title (article 74), and the authority of the President.

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**§ 877. Art. 77. Principals**

Any person punishable under this chapter who—

(1) commits an offense punishable by this chapter, or aids, abets, counsels, commands, or procures its commission; or

(2) causes an act to be done which if directly performed by him would be punishable by this chapter;

is a principal.

**§ 878. Art. 78. Accessory after the fact**

Any person subject to this chapter who, knowing that an offense punishable by this chapter has been committed, receives, comforts, or assists the offender in order to hinder or prevent his apprehension, trial, or punishment shall be punished as a court-martial may direct.

**§ 879. Art. 79. Conviction of lesser included offense**

An accused may be found guilty of an offense necessarily included in the offense charged or of an attempt to commit either the offense charged or an offense necessarily included therein.

**§ 880. Art. 80. Attempts**

(a) An act, done with specific intent to commit an offense under this chapter, amounting to more than mere preparation and tending,

even though failing, to effect its commission, is an attempt to commit that offense.

(b) Any person subject to this chapter who attempts to commit any offense punishable by this chapter shall be punished as a court-martial may direct, unless otherwise specifically prescribed.

(c) Any person subject to this chapter may be convicted of an attempt to commit an offense although it appears on the trial that the offense was consummated.

#### **§ 881. Art. 81. Conspiracy**

Any person subject to this chapter who conspires with any other person to commit an offense under this chapter shall, if one or more of the conspirators does an act to effect the object of the conspiracy, be punished as a court-martial may direct.

#### **§ 882. Art. 82. Solicitation**

(a) Any person subject to this chapter who solicits or advises another or others to desert in violation of section 885 of this title (article 85) or mutiny in violation of section 894 of this title (article 94) shall, if the offense solicited or advised is attempted or committed, be punished with the punishment provided for the commission of the offense, but, if the offense solicited or advised is not committed or attempted, he shall be punished as a court-martial may direct.

(b) Any person subject to this chapter who solicits or advises another or others to commit an act of misbehavior before the enemy in violation of section 899 of this title (article 99) or sedition in violation of section 894 of this title (article 94) shall, if the offense solicited or advised is committed, be punished with the punishment provided for the commission of the offense, but, if the offense solicited or advised is not committed, he shall be punished as a court-martial may direct.

#### **§ 883. Art. 83. Fraudulent enlistment, appointment, or separation**

Any person who—

(1) procures his own enlistment or appointment in the armed forces by knowingly false representation or deliberate concealment as to his qualifications for that enlistment or appointment and receives pay or allowances thereunder; or

(2) procures his own separation from the armed forces by knowingly false representation or deliberate concealment as to his eligibility for that separation;

shall be punished as a court-martial may direct.

#### **§ 884. Art. 84. Unlawful enlistment, appointment, or separation**

Any person subject to this chapter who effects an enlistment or appointment in or a separation from the armed forces of any person who is known to him to be ineligible for that enlistment, appointment, or separation because it is prohibited by law, regulation, or order shall be punished as a court-martial may direct.



**§ 885. Art. 85. Desertion**

(a) Any member of the armed forces who—

(1) without authority goes or remains absent from his unit, organization, or place of duty with intent to remain away therefrom permanently;

(2) quits his unit, organization, or place of duty with intent to avoid hazardous duty or to shirk important service; or

(3) without being regularly separated from one of the armed forces enlists or accepts an appointment in the same or another one of the armed forces without fully disclosing the fact that he has not been regularly separated, or enters any foreign armed service except when authorized by the United States;

is guilty of desertion.

(b) Any commissioned officer of the armed forces who, after tender of his resignation and before notice of its acceptance, quits his post or proper duties without leave and with intent to remain away therefrom permanently is guilty of desertion.

(c) Any person found guilty of desertion or attempt to desert shall be punished, if the offense is committed in time of war, by death or such other punishment as a court-martial may direct, but if the desertion or attempt to desert occurs at any other time, by such punishment, other than death, as a court-martial may direct.

**§ 886. Art. 86. Absence without leave**

Any member of the armed forces who, without authority—

(1) fails to go to his appointed place of duty at the time prescribed;

(2) goes from that place; or

(3) absents himself or remains absent from his unit, organization, or place of duty at which he is required to be at the time prescribed;

shall be punished as a court-martial may direct.

**§ 887. Art. 87. Missing movement**

Any person subject to this chapter who through neglect or design misses the movement of a ship, aircraft, or unit with which he is required in the course of duty to move shall be punished as a court-martial may direct.

**§ 888. Art. 88. Contempt toward officials**

Any commissioned officer who uses contemptuous words against the President, the Vice President, Congress, the Secretary of Defense, the Secretary of a military department, the Secretary of the Treasury, or the Governor or legislature of any State, Territory, Commonwealth, or possession in which he is on duty or present shall be punished as a court-martial may direct.

**§ 889. Art. 89. Disrespect toward superior commissioned officer**

Any person subject to this chapter who behaves with disrespect toward his superior commissioned officer shall be punished as a court-martial may direct.

**§ 890. Art. 90. Assaulting or willfully disobeying superior commissioned officer**

Any person subject to this chapter who—

(1) strikes his superior commissioned officer or draws or lifts up any weapon or offers any violence against him while he is in the execution of his office; or

(2) willfully disobeys a lawful command of his superior commissioned officer;

shall be punished, if the offense is committed in time of war, by death or such other punishment as a court-martial may direct, and if the offense is committed at any other time, by such punishment, other than death, as a court-martial may direct.

**§ 891. Art. 91. Insubordinate conduct toward warrant officer, noncommissioned officer, or petty officer**

Any warrant officer or enlisted member who—

(1) strikes or assaults a warrant officer, noncommissioned officer, or petty officer, while that officer is in the execution of his office;

(2) willfully disobeys the lawful order of a warrant officer, noncommissioned officer, or petty officer; or

(3) treats with contempt or is disrespectful in language or deportment toward a warrant officer, noncommissioned officer, or petty officer, while that officer is in the execution of his office;

shall be punished as a court-martial may direct.

**§ 892. Art. 92. Failure to obey order or regulation**

Any person subject to this chapter who—

(1) violates or fails to obey any lawful general order or regulation;

(2) having knowledge of any other lawful order issued by a member of the armed forces, which it is his duty to obey, fails to obey the order; or

(3) is derelict in the performance of his duties;

shall be punished as a court-martial may direct.

**§ 893. Art. 93. Cruelty and maltreatment**

Any person subject to this chapter who is guilty of cruelty toward, or oppression or maltreatment of, any person subject to his orders shall be punished as a court-martial may direct.

**§ 894. Art. 94. Mutiny or sedition**

(a) Any person subject to this chapter who—

(1) with intent to usurp or override lawful military authority, refuses, in concert with any other person, to obey orders or otherwise do his duty or creates any violence or disturbance is guilty of mutiny;

(2) with intent to cause the overthrow or destruction of lawful civil authority, creates, in concert with any other person, revolt, violence, or other disturbance against that authority is guilty of sedition;

(3) fails to do his utmost to prevent and suppress a mutiny or sedition being committed in his presence, or fails to take all

reasonable means to inform his superior commissioned officer or commanding officer of a mutiny or sedition which he knows or has reason to believe is taking place, is guilty of a failure to suppress or report a mutiny or sedition.

(b) A person who is found guilty of attempted mutiny, mutiny, sedition, or failure to suppress or report a mutiny or sedition shall be punished by death or such other punishment as a court-martial may direct.

#### **§ 895. Art. 95. Resistance, breach of arrest, and escape**

Any person subject to this chapter who resists apprehension or breaks arrest or who escapes from custody or confinement shall be punished as a court-martial may direct.

#### **§ 896. Art. 96. Releasing prisoner without proper authority**

Any person subject to this chapter who, without proper authority, releases any prisoner committed to his charge, or who through neglect or design suffers any such prisoner to escape, shall be punished as a court-martial may direct, whether or not the prisoner was committed in strict compliance with law.

#### **§ 897. Art. 97. Unlawful detention**

Any person subject to this chapter who, except as provided by law, apprehends, arrests, or confines any person shall be punished as a court-martial may direct.

#### **§ 898. Art. 98. Noncompliance with procedural rules**

Any person subject to this chapter who—

(1) is responsible for unnecessary delay in the disposition of any case of a person accused of an offense under this chapter;  
or

(2) knowingly and intentionally fails to enforce or comply with any provision of this chapter regulating the proceedings before, during, or after trial of an accused;  
shall be punished as a court-martial may direct.

#### **§ 899. Art. 99. Misbehavior before the enemy**

Any member of the armed forces who before or in the presence of the enemy—

(1) runs away;

(2) shamefully abandons, surrenders, or delivers up any command, unit, place, or military property which it is his duty to defend;

(3) through disobedience, neglect, or intentional misconduct endangers the safety of any such command, unit, place, or military property;

(4) casts away his arms or ammunition;

(5) is guilty of cowardly conduct;

(6) quits his place of duty to plunder or pillage;

(7) causes false alarms in any command, unit, or place under control of the armed forces;

(8) willfully fails to do his utmost to encounter, engage, capture, or destroy any enemy troops, combatants, vessels, aircraft,

or any other thing, which it is his duty so to encounter, engage, capture, or destroy; or

(9) does not afford all practicable relief and assistance to any troops, combatants, vessels, or aircraft of the armed forces belonging to the United States or their allies when engaged in battle; shall be punished by death or such other punishment as a court-martial may direct.

**§ 900. Art. 100. Subordinate compelling surrender**

Any person subject to this chapter who compels or attempts to compel the commander of any place, vessel, aircraft, or other military property, or of any body of members of the armed forces, to give it up to an enemy or to abandon it, or who strikes the colors or flag to an enemy without proper authority, shall be punished by death or such other punishment as a court-martial may direct.

**§ 901. Art. 101. Improper use of countersign**

Any person subject to this chapter who in time of war discloses the parole or countersign to any person not entitled to receive it or who gives to another who is entitled to receive and use the parole or countersign a different parole or countersign from that which, to his knowledge, he was authorized and required to give, shall be punished by death or such other punishment as a court-martial may direct.

**§ 902. Art. 102. Forcing a safeguard**

Any person subject to this chapter who forces a safeguard shall suffer death or such other punishment as a court-martial may direct.

**§ 903. Art. 103. Captured or abandoned property**

(a) All persons subject to this chapter shall secure all public property taken from the enemy for the service of the United States, and shall give notice and turn over to the proper authority without delay all captured or abandoned property in their possession, custody, or control.

(b) Any person subject to this chapter who—

(1) fails to carry out the duties prescribed in subsection (a);

(2) buys, sells, trades, or in any way deals in or disposes of captured or abandoned property, whereby he receives or expects any profit, benefit, or advantage to himself or another directly or indirectly connected with himself; or

(3) engages in looting or pillaging;

shall be punished as a court-martial may direct.

**§ 904. Art. 104. Aiding the enemy**

Any person who—

(1) aids, or attempts to aid, the enemy with arms, ammunition, supplies, money, or other things; or

(2) without proper authority, knowingly harbors or protects or gives intelligence to, or communicates or corresponds with or holds any intercourse with the enemy, either directly or indirectly;

shall suffer death or such other punishment as a court-martial or military commission may direct.



**§ 905. Art. 105. Misconduct as prisoner**

Any person subject to this chapter who, while in the hands of the enemy in time of war—

(1) for the purpose of securing favorable treatment by his captors acts without proper authority in a manner contrary to law, custom, or regulation, to the detriment of others of whatever nationality held by the enemy as civilian or military prisoners; or

(2) while in a position of authority over such persons maltreats them without justifiable cause;

shall be punished as a court-martial may direct.

**§ 906. Art. 106. Spies**

Any person who in time of war is found lurking as a spy or acting as a spy in or about any place, vessel, or aircraft, within the control or jurisdiction of any of the armed forces, or in or about any shipyard, any manufacturing or industrial plant, or any other place or institution engaged in work in aid of the prosecution of the war by the United States, or elsewhere, shall be tried by a general court-martial or by a military commission and on conviction shall be punished by death.

**§ 907. Art. 107. False official statements**

Any person subject to this chapter who, with intent to deceive, signs any false record, return, regulation, order, or other official document, knowing it to be false, or makes any other false official statement knowing it to be false, shall be punished as a court-martial may direct.

**§ 908. Art. 108. Military property of United States—Loss, damage, destruction, or wrongful disposition**

Any person subject to this chapter who, without proper authority—

(1) sells or otherwise disposes of;

(2) willfully or through neglect damages, destroys, or loses; or

(3) willfully or through neglect suffers to be lost, damaged, destroyed, sold, or wrongfully disposed of;

any military property of the United States, shall be punished as a court-martial may direct.

**§ 909. Art. 109. Property other than military property of United States—Waste, spoilage, or destruction**

Any person subject to this chapter who willfully or recklessly wastes, spoils, or otherwise willfully and wrongfully destroys or damages any property other than military property of the United States shall be punished as a court-martial may direct.

**§ 910. Art. 110. Improper hazarding of vessel**

(a) Any person subject to this chapter who willfully and wrongfully hazards or suffers to be hazarded any vessel of the armed forces shall suffer death or such other punishment as a court-martial may direct.

(b) Any person subject to this chapter who negligently hazards or suffers to be hazarded any vessel of the armed forces shall be punished as a court-martial may direct.

**§ 911. Art. 111. Drunken or reckless driving**

Any person subject to this chapter who operates any vehicle while drunk, or in a reckless or wanton manner, shall be punished as a court-martial may direct.

**§ 912. Art. 112. Drunk on duty**

Any person subject to this chapter other than a sentinel or look-out, who is found drunk on duty, shall be punished as a court-martial may direct.

**§ 913. Art. 113. Misbehavior of sentinel**

Any sentinel or look-out who is found drunk or sleeping upon his post, or leaves it before he is regularly relieved, shall be punished, if the offense is committed in time of war, by death or such other punishment as a court-martial may direct, but if the offense is committed at any other time, by such punishment other than death as a court-martial may direct.

**§ 914. Art. 114. Dueling**

Any person subject to this chapter who fights or promotes, or is concerned in or connives at fighting a duel, or who, having knowledge of a challenge sent or about to be sent, fails to report the fact promptly to the proper authority, shall be punished as a court-martial may direct.

**§ 915. Art. 115. Malingering**

Any person subject to this chapter who for the purpose of avoiding work, duty, or service—

- (1) feigns illness, physical disablement, mental lapse or derangement; or
  - (2) intentionally inflicts self-injury;
- shall be punished as a court-martial may direct.

**§ 916. Art. 116. Riot or breach of peace**

Any person subject to this chapter who causes or participates in any riot or breach of the peace shall be punished as a court-martial may direct.

**§ 917. Art. 117. Provoking speeches or gestures**

Any person subject to this chapter who uses provoking or reproachful words or gestures towards any other person subject to this chapter shall be punished as a court-martial may direct.

**§ 918. Art. 118. Murder**

Any person subject to this chapter who, without justification or excuse, unlawfully kills a human being, when he—

- (1) has a premeditated design to kill;
- (2) intends to kill or inflict great bodily harm;
- (3) is engaged in an act which is inherently dangerous to others and evinces a wanton disregard of human life; or
- (4) is engaged in the perpetration or attempted perpetration of burglary, sodomy, rape, robbery, or aggravated arson;

is guilty of murder, and shall suffer such punishment as a court-martial may direct, except that if found guilty under clause (1) or (4), he shall suffer death or imprisonment for life as a court-martial may direct.

#### **§ 919. Art. 119. Manslaughter**

(a) Any person subject to this chapter who, with an intent to kill or inflict great bodily harm, unlawfully kills a human being in the heat of sudden passion caused by adequate provocation is guilty of voluntary manslaughter and shall be punished as a court-martial may direct.

(b) Any person subject to this chapter who, without an intent to kill or inflict great bodily harm, unlawfully kills a human being—

(1) by culpable negligence; or

(2) while perpetrating or attempting to perpetrate an offense, other than those named in clause (4) of section 918 of this title (article 118), directly affecting the person;

is guilty of involuntary manslaughter and shall be punished as a court-martial may direct.

#### **§ 920. Art. 120. Rape and carnal knowledge**

(a) Any person subject to this chapter who commits an act of sexual intercourse with a female not his wife, by force and without her consent, is guilty of rape and shall be punished by death or such other punishment as a court-martial may direct.

(b) Any person subject to this chapter who, under circumstances not amounting to rape, commits an act of sexual intercourse with a female not his wife who has not attained the age of sixteen years, is guilty of carnal knowledge and shall be punished as a court-martial may direct.

(c) Penetration, however slight, is sufficient to complete either of these offenses.

#### **§ 921. Art. 121. Larceny and wrongful appropriation**

(a) Any person subject to this chapter who wrongfully takes, obtains, or withholds, by any means, from the possession of the owner or of any other person any money, personal property, or article of value of any kind—

(1) with intent permanently to deprive or defraud another person of the use and benefit of property or to appropriate it to his own use or the use of any person other than the owner, steals that property and is guilty of larceny; or

(2) with intent temporarily to deprive or defraud another person of the use and benefit of property or to appropriate it to his own use or the use of any person other than the owner, is guilty of wrongful appropriation.

(b) Any person found guilty of larceny or wrongful appropriation shall be punished as a court-martial may direct.

#### **§ 922. Art. 122. Robbery**

Any person subject to this chapter who with intent to steal takes anything of value from the person or in the presence of another, against his will, by means of force or violence or fear of immediate or

future injury to his person or property or to the person or property of a relative or member of his family or of anyone in his company at the time of the robbery, is guilty of robbery and shall be punished as a court-martial may direct.

#### **§ 923. Art. 123. Forgery**

Any person subject to this chapter who, with intent to defraud—

- (1) falsely makes or alters any signature to, or any part of, any writing which would, if genuine, apparently impose a legal liability on another or change his legal right or liability to his prejudice; or
- (2) utters, offers, issues, or transfers such a writing, known by him to be so made or altered;

is guilty of forgery and shall be punished as a court-martial may direct.

#### **§ 924. Art. 124. Maiming**

Any person subject to this chapter who, with intent to injure, disfigure, or disable, inflicts upon the person of another an injury which—

- (1) seriously disfigures his person by any mutilation thereof;
- (2) destroys or disables any member or organ of his body; or
- (3) seriously diminishes his physical vigor by the injury of any member or organ;

is guilty of maiming and shall be punished as a court-martial may direct.

#### **§ 925. Art. 125. Sodomy**

(a) Any person subject to this chapter who engages in unnatural carnal copulation with another person of the same or opposite sex or with an animal is guilty of sodomy. Penetration, however slight, is sufficient to complete the offense.

(b) Any person found guilty of sodomy shall be punished as a court-martial may direct.

#### **§ 926. Art. 126. Arson**

(a) Any person subject to this chapter who willfully and maliciously burns or sets on fire an inhabited dwelling, or any other structure, movable or immovable, wherein to the knowledge of the offender there is at the time a human being, is guilty of aggravated arson and shall be punished as a court-martial may direct.

(b) Any person subject to this chapter who willfully and maliciously burns or sets fire to the property of another, except as provided in subsection (a), is guilty of simple arson and shall be punished as a court-martial may direct.

#### **§ 927. Art. 127. Extortion**

Any person subject to this chapter who communicates threats to another person with the intention thereby to obtain anything of value or any acquittance, advantage, or immunity is guilty of extortion and shall be punished as a court-martial may direct.



### § 928. Art. 128. Assault

(a) Any person subject to this chapter who attempts or offers with unlawful force or violence to do bodily harm to another person, whether or not the attempt or offer is consummated, is guilty of assault and shall be punished as a court-martial may direct.

(b) Any person subject to this chapter who—

(1) commits an assault with a dangerous weapon or other means or force likely to produce death or grievous bodily harm;  
or

(2) commits an assault and intentionally inflicts grievous bodily harm with or without a weapon;

is guilty of aggravated assault and shall be punished as a court-martial may direct.

### § 929. Art. 129. Burglary

Any person subject to this chapter who, with intent to commit an offense punishable under sections 918–928 of this title (articles 118–128), breaks and enters, in the nighttime, the dwelling house of another, is guilty of burglary and shall be punished as a court-martial may direct.

### § 930. Art. 130. Housebreaking

Any person subject to this chapter who unlawfully enters the building or structure of another with intent to commit a criminal offense therein is guilty of housebreaking and shall be punished as a court-martial may direct.

### § 931. Art. 131. Perjury

Any person subject to this chapter who in a judicial proceeding or in a course of justice willfully and corruptly gives, upon a lawful oath or in any form allowed by law to be substituted for an oath, any false testimony material to the issue or matter of inquiry is guilty of perjury and shall be punished as a court-martial may direct.

### § 932. Art. 132. Frauds against the United States

Any person subject to this chapter—

(1) who, knowing it to be false or fraudulent—

(A) makes any claim against the United States or any officer thereof; or

(B) presents to any person in the civil or military service thereof, for approval or payment, any claim against the United States or any officer thereof;

(2) who, for the purpose of obtaining the approval, allowance, or payment of any claim against the United States or any officer thereof—

(A) makes or uses any writing or other paper knowing it to contain any false or fraudulent statements;

(B) makes any oath to any fact or to any writing or other paper knowing the oath to be false; or

(C) forges or counterfeits any signature upon any writing or other paper, or uses any such signature knowing it to be forged or counterfeited;

(3) who, having charge, possession, custody, or control of any money, or other property of the United States, furnished or intended for the armed forces thereof, knowingly delivers to any person having authority to receive it, any amount thereof less than that for which he receives a certificate or receipt; or

(4) who, being authorized to make or deliver any paper certifying the receipt of any property of the United States furnished or intended for the armed forces thereof, makes or delivers to any person such writing without having full knowledge of the truth of the statements therein contained and with intent to defraud the United States;

shall, upon conviction, be punished as a court-martial may direct.

**§ 933. Art. 133. Conduct unbecoming an officer and a gentleman**

Any commissioned officer, cadet, or midshipman who is convicted of conduct unbecoming an officer and a gentleman shall be punished as a court-martial may direct.

**§ 934. Art. 134. General article**

Though not specifically mentioned in this chapter, all disorders and neglects to the prejudice of good order and discipline in the armed forces, all conduct of a nature to bring discredit upon the armed forces, and crimes and offenses not capital, of which persons subject to this chapter may be guilty, shall be taken cognizance of by a general, special, or summary court-martial, according to the nature and degree of the offense, and shall be punished at the discretion of that court.

**SUBCHAPTER XI.—MISCELLANEOUS PROVISIONS**

**Sec. Art.**

935. 135. Courts of inquiry.

936. 136. Authority to administer oaths and to act as notary.

937. 137. Articles to be explained.

938. 138. Complaints of wrongs.

939. 139. Redress of injuries to property.

940. 140. Delegation by the President.

**§ 935. Art. 135. Courts of inquiry**

(a) Courts of inquiry to investigate any matter may be convened by any person authorized to convene a general court-martial or by any other person designated by the Secretary concerned for that purpose, whether or not the persons involved have requested such an inquiry.

(b) A court of inquiry consists of three or more commissioned officers. For each court of inquiry the convening authority shall also appoint counsel for the court.

(c) Any person subject to this chapter whose conduct is subject to inquiry shall be designated as a party. Any person subject to this chapter or employed by the Department of Defense who has a direct interest in the subject of inquiry has the right to be designated as a party upon request to the court. Any person designated as a party shall be given due notice and has the right to be present, to be represented by counsel, to cross-examine witnesses, and to introduce evidence.

(d) Members of a court of inquiry may be challenged by a party, but only for cause stated to the court.

(e) The members, counsel, the reporter, and interpreters of courts of inquiry shall take an oath to faithfully perform their duties.

(f) Witnesses may be summoned to appear and testify and be examined before courts of inquiry, as provided for courts-martial.

(g) Courts of inquiry shall make findings of fact but may not express opinions or make recommendations unless required to do so by the convening authority.

(h) Each court of inquiry shall keep a record of its proceedings, which shall be authenticated by the signatures of the president and counsel for the court and forwarded to the convening authority. If the record cannot be authenticated by the president, it shall be signed by a member in lieu of the president. If the record cannot be authenticated by the counsel for the court, it shall be signed by a member in lieu of the counsel.

**§ 936. Art. 136. Authority to administer oaths and to act as notary**

(a) The following persons on active duty may administer oaths for the purposes of military administration, including military justice, and have the general powers of a notary public and of a consul of the United States, in the performance of all notarial acts to be executed by members of any of the armed forces, wherever they may be, and by other persons subject to this chapter outside of the United States:

(1) All judge advocates of the Army and the Air Force.

(2) All law specialists.

(3) All summary courts-martial.

(4) All adjutants, assistant adjutants, acting adjutants, and personnel adjutants.

(5) All commanding officers of the Navy, Marine Corps, and Coast Guard.

(6) All staff judge advocates and legal officers, and acting or assistant staff judge advocates and legal officers.

(7) All other persons designated by regulations of the armed forces or by statute.

(b) The following persons on active duty may administer oaths necessary in the performance of their duties:

(1) The president, law officer, trial counsel, and assistant trial counsel for all general and special courts-martial.

(2) The president and the counsel for the court of any court of inquiry.

(3) All officers designated to take a deposition.

(4) All persons detailed to conduct an investigation.

(5) All recruiting officers.

(6) All other persons designated by regulations of the armed forces or by statute.

(c) No fee may be paid to or received by any person for the performance of any notarial act herein authorized.

(d) The signature without seal of any such person acting as notary, together with the title of his office, is prima facie evidence of his authority.

**§ 937. Art. 137. Articles to be explained**

Sections 802, 803, 807-815, 825, 827, 831, 837, 838, 855, 877-934, and 937-939 (articles 2, 3, 7-15, 25, 27, 31, 37, 38, 55, 77-134, and 137-139) of this chapter shall be carefully explained to each enlisted member at the time of his entrance on active duty, or within six days thereafter. They shall be explained again after he has completed six months of active duty, and again at the time when he reenlists. A complete text of the Uniform Code of Military Justice and of the regulations prescribed by the President thereunder shall be made available to any person on active duty, upon his request, for his personal examination.

**§ 938. Art. 138. Complaints of wrongs**

Any member of the armed forces who believes himself wronged by his commanding officer, and who, upon due application to that commanding officer, is refused redress, may complain to any superior commissioned officer, who shall forward the complaint to the officer exercising general court-martial jurisdiction over the officer against whom it is made. The officer exercising general court-martial jurisdiction shall examine into the complaint and take proper measures for redressing the wrong complained of; and he shall, as soon as possible, send to the Secretary concerned a true statement of that complaint, with the proceedings had thereon.

**§ 939. Art. 139. Redress of injuries to property**

(a) Whenever complaint is made to any commanding officer that willful damage has been done to the property of any person or that his property has been wrongfully taken by members of the armed forces, he may, under such regulations as the Secretary concerned may prescribe, convene a board to investigate the complaint. The board shall consist of from one to three commissioned officers and, for the purpose of that investigation, it has power to summon witnesses and examine them upon oath, to receive depositions or other documentary evidence, and to assess the damages sustained against the responsible parties. The assessment of damages made by the board is subject to the approval of the commanding officer, and in the amount approved by him shall be charged against the pay of the offenders. The order of the commanding officer directing charges herein authorized is conclusive on any disbursing officer for the payment by him to the injured parties of the damages so assessed and approved.

(b) If the offenders cannot be ascertained, but the organization or detachment to which they belong is known, charges totaling the amount of damages assessed and approved may be made in such proportion as may be considered just upon the individual members thereof who are shown to have been present at the scene at the time the damages complained of were inflicted, as determined by the approved findings of the board.

**§ 940. Art. 140. Delegation by the President**

The President may delegate any authority vested in him under this chapter, and provide for the subdelegation of any such authority.



## CHAPTER 49.—MISCELLANEOUS PROHIBITIONS AND PENALTIES

[No present sections]

## CHAPTER 51.—RESERVE COMPONENTS: STANDARDS AND PROCEDURES FOR RETENTION AND PROMOTION

Sec.

1001. Secretary to prescribe.

1003. Officers: age limitations.

1004. Physical examination.

### § 1001. Secretary to prescribe

(a) The Secretary concerned shall, by regulation, prescribe—

(1) standards and qualifications for the retention and promotion of members of the reserve components under his jurisdiction; and

(2) equitable procedures for the periodic determination of the compliance of each such Reserve with those standards and qualifications.

(b) If a Reserve fails to comply with the standards and qualifications prescribed under subsection (a), he shall—

(1) if qualified, be transferred to an inactive reserve status;

(2) if qualified, be retired without pay; or

(3) have his appointment or enlistment terminated.

### § 1003. Officers: age limitations

A reserve officer who has passed the maximum age prescribed for his grade and classification may, as prescribed by the Secretary concerned—

(1) be separated from the armed force concerned;

(2) be retained in, or transferred to, an active or inactive status; or

(3) upon his request, be retained in, or transferred to, a retired status.

However, no officer of the Army National Guard of the United States or the Air National Guard of the United States may be retained or transferred under this section without the consent of the governor or other appropriate authority of the jurisdiction concerned.

### § 1004. Physical examination

(a) Each Reserve who is not on active duty and not in the Retired Reserve shall be examined as to his physical fitness at least once every four years, or more often as the Secretary concerned considers necessary, and shall execute and submit annually a certificate of physical condition.

(b) The kind of duty to which a Reserve ordered to active duty may be assigned shall be considered in determining physical qualifications for active duty.

(c) Except as otherwise provided by law, the Secretary concerned may provide for the honorable discharge or the transfer to a retired status of members of the reserve components under his jurisdiction who are found to be not physically qualified for active duty. How-

ever, no member of the Army National Guard of the United States or the Air National Guard of the United States may be transferred under this subsection without the consent of the governor or other appropriate authority of the jurisdiction concerned.

## **CHAPTER 53.—MISCELLANEOUS RIGHTS AND BENEFITS**

Sec.

1031. Administration of oath.

1032. Dual capacity: Reserve accepting employment with foreign government or concern.

1033. Compensation: Reserve on active duty accepting from any person.

1034. Communicating with a member of Congress.

1035. Enlisted members' deposits.

### **§ 1031. Administration of oath**

Any commissioned officer of any component of an armed force, whether or not on active duty, may administer any oath—

(1) required for the enlistment or appointment of any person in the armed forces; or

(2) required by law in connection with such an enlistment or appointment.

### **§ 1032. Dual capacity: Reserve accepting employment with foreign government or concern**

Subject to the approval of the Secretary concerned, a Reserve may accept civil employment with, and compensation therefor from, any foreign government or any concern that is wholly or partly controlled by a foreign government.

### **§ 1033. Compensation: Reserve on active duty accepting from any person**

Notwithstanding any other provision of law, any Reserve who, before being ordered to active duty, was receiving compensation from any person may, while he is on that duty, receive compensation from that person.

### **§ 1034. Communicating with a member of Congress**

No person may restrict any member of an armed force in communicating with a member of Congress, unless the communication is unlawful or violates a regulation necessary to the security of the United States.

### **§ 1035. Enlisted members' deposits**

(a) An enlisted member of the Army, Navy, Air Force, or Marine Corps may deposit his savings, in amounts of \$5 or more, with any branch, office, or officer of his armed force designated by the Secretary concerned. That branch, office, or officer shall give the member a deposit book containing the name of the member and of the officer receiving the deposit. The amount, date, and place of each deposit shall be entered in that book. Amounts so deposited shall be deposited in the Treasury and kept as a separate fund called the "Pay of the Army, Deposit Fund", "Pay of the Navy, Deposit Fund", "Pay of the Air Force, Deposit Fund", or "Pay of the Marine Corps, Deposit Fund", as the case may be, and shall be accounted for in the same manner as public funds.

(b) Interest at the rate of 4 percent a year accrues on amounts deposited for six months or more.

(c) Payments of deposits from the respective funds named in subsection (a), and interest thereon, may be made only to the member upon discharge, or at such time before his discharge as may be prescribed by the Secretary concerned, or to the member's heirs or legal representative.

(d) An amount deposited under subsection (a), with the interest thereon, is exempt from liability for the enlisted member's debts, including any indebtedness to the United States or any instrumentality thereof, and is not subject to forfeiture by sentence of a court-martial.

## CHAPTER 55.—VOTING BY MEMBERS OF ARMED FORCES

Sec.

1071. Purpose; construction.

1072. Definitions.

1073. Right to vote in war-time presidential and congressional elections.

1074. Enactment of legislation relating to voting in other elections.

1075. Post card requests for absentee ballots: printing and transmission.

1076. Use of post cards; waiver of registration; voting by discharged persons.

1077. Distribution of ballots, envelopes, and voting instructions.

1078. Instructions for marking ballots.

1079. Establishment of right to vote.

1080. Style and marking of envelope; inserts; return envelope; size and weight of ballots.

1081. Notification of elections.

1082. Extension of time limit.

1083. Transmission, delivery, and return of post cards, ballots, etc.

1084. Administration.

1085. Prevention of fraud, coercion, and undue influence; free discussion; acts done in good faith.

1086. Free postage.

### § 1071. Purpose; construction

(a) The purpose of this chapter is to provide ample opportunity for the persons covered by section 1074 of this title to vote for Federal, State, and local officials and to use the absentee balloting procedures of the several States to the greatest extent possible. It shall be construed liberally to carry out this purpose.

(b) Nothing in this chapter restricts the right of any member of the armed forces, or any other person, to vote according to the law of the State where he is domiciled.

### § 1072. Definitions

In this chapter:

(1) "Secretary of state" includes any other State official who under the law of that State is the appropriate official to carry out functions recommended in this chapter to be performed by the secretary of state.

(2) "Member of the merchant marine of the United States" means a person, other than a member of the armed forces—

(A) who is an officer or member of the crew of (i) a vessel owned by the United States, (ii) a vessel documented under the laws of the United States, or (iii) a vessel of foreign registry under charter to, or under the control of, the United States; or

(B) who is enrolled with the United States for employment or for training for employment, or who is maintained by the United States for emergency relief service, as an officer or other member of a crew of a vessel described in clause (A).

However, "member of the merchant marine of the United States" does not include a person employed, enrolled for employment or for training for employment, or maintained for emergency relief service, on the Great Lakes or the inland waterways.

#### **§ 1073. Right to vote in war-time presidential and congressional elections**

(a) Notwithstanding any State law relating to the registration of voters, in time of war each member of the armed forces on active duty who is absent from his domicile, and who but for his absence would be eligible to register and vote at any election under the law of the State where he is domiciled, is entitled to vote for electors for President and Vice President, United States Senators, and Representatives in Congress, as provided in this chapter.

(b) In time of war no member of the armed forces on active duty may be required to pay a poll tax or other tax, or make any other payment, to a State or a political subdivision thereof as a condition of voting in an election for President and Vice President, electors for President and Vice President, United States Senators, or Representatives in Congress.

#### **§ 1074. Enactment of legislation relating to voting in other elections**

In addition to conferring the right in section 1073 of this title to vote in time of war, Congress recommends that the several States enact appropriate legislation to enable each of the persons in the following categories who is absent from his domicile to vote by absentee ballot in any primary, special, or general election held in time of war or peace in his election district or precinct, if he is eligible to vote in that election:

- (1) Members of the armed forces on active duty.
- (2) Members of the merchant marine of the United States.
- (3) Civilians officially attached to, and serving outside the United States with, the armed forces.

#### **§ 1075. Post card requests for absentee ballots: printing and transmission**

(a) The Secretaries of the Army, Navy, Air Force, Treasury, and Commerce shall each have an adequate number of post card requests for absentee ballots printed for use under this chapter. Whenever practicable and compatible with military and merchant-marine operations, they shall have these requests—

- (1) delivered in hand to the persons covered by section 1074 of this title for use in any general election for electors for President and Vice President, United States Senators, or Representatives in Congress;



(2) made available outside the United States not later than August 15 before the election, and inside the United States not later than September 15 before the election; and

(3) made available at appropriate times for use in general elections other than those covered by clause (1), and in primary and special elections.

(b) On one side of the post card the following shall be printed:

**FILL OUT EVERY ITEM**

Secretary of State, or other appropriate official within the State of \_\_\_\_\_:

(1) I hereby request an absentee ballot to vote in the coming (general) (primary) (special) election.

(Strike out inapplicable words)

(2) I am a citizen of the United States, serving—

in the armed forces \_\_\_\_\_ ( )

in the merchant marine of the United States \_\_\_\_\_ ( )

as a civilian outside the United States officially attached to and serving with the armed forces \_\_\_\_\_ ( )

(3) I was born \_\_\_\_\_

(Day) (Month) (Year)

(4) For \_\_\_\_\_ years preceding the above election my home residence (not military residence) in the above State has been \_\_\_\_\_

(Street and number or rural route)

\_\_\_\_\_ To the best of my knowledge, my voting precinct

(City, town, or village) (County)

or district is \_\_\_\_\_

(5) Mail my ballot to the following service (or merchant marine) address

(Must include COMPLETE military, naval, or merchant marine MAIL address; include military or naval unit and APO or FPO and Postmaster; for merchant marine include vessel, foreign agent, and port)

You must both sign your name

and print or type it

\_\_\_\_\_  
(Sign here)

\_\_\_\_\_  
(Print or type name and serial number plainly here)

Subscribed and sworn to before me on \_\_\_\_\_

(Day, month, year)

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Title)

(Commissioned or warrant officer, noncommissioned officer of one of the highest four enlisted grades, or petty officer, or other person authorized to administer and attest this oath, writes his name and rank or title here)

If this card is used in applying for a primary ballot (but not otherwise), state below choice of party:

(c) On the other side of the post card the following shall be printed in red:

Free of U. S. postage  
including air mail

Name and complete  
military, naval, or  
merchant marine address

\_\_\_\_\_

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**OFFICIAL ELECTION BALLOTING MATERIAL—VIA AIR MAIL**

SECRETARY OF STATE OF \_\_\_\_\_

(Home State)

(Capital city of Home State)

(Home State)

**§ 1076. Use of post cards; waiver of registration; voting by discharged persons**

(a) To avoid expense, duplication of effort, and loss of time, it is recommended that, when the post card request for an absentee ballot is executed by a person covered by section 1074 of this title, the State concerned accept it as—

- (1) an application for an absentee ballot under its absentee voting laws;
- (2) an application for registration under its election laws; and
- (3) a source of information to implement its absentee voting laws.

(b) It is further recommended that each State—

- (1) waive registration for each person covered by section 1074 of this title whose service prevents him from registering; and
- (2) provide an opportunity to vote in an election for each person who would be eligible to register and vote at that election but for the fact that he was discharged honorably or under honorable conditions from the armed forces too late to register.

**§ 1077. Distribution of ballots, envelopes, and voting instructions**

(a) In order that action may be taken as soon as possible upon each post card request for an absentee ballot, it is recommended that the secretary of state of the State concerned promptly forward the request to the proper election official.

(b) It is further recommended that, so far as its law permits, each State instruct its election officials to mail promptly to each voter applying by post card under this chapter—

- (1) a suitable absentee ballot;
- (2) a self-addressed envelope for the return of the ballot; and
- (3) instructions for using the ballot and envelope.

**§ 1078. Instructions for marking ballots**

(a) It is recommended that each State include in its instructions for absentee voting by the persons covered by section 1074 of this title an express instruction that the voter may mark his ballot by pencil, pen, crayon, or any other suitable method of showing his intention. If the laws of a State do not authorize such an instruction, it is recommended that they be amended to do so.

(b) It is further recommended that each State express its voting instructions in simple terms, and not merely by quoting the pertinent statutes.

**§ 1079. Establishment of right to vote**

(a) It is recommended that each State that makes no provision, either on the envelope or separately, for sending with the absentee ballot a printed form to be used by the voter to establish his right to vote, have a form of oath printed and enclosed with each absentee

ballot that is mailed in response to a post card request provided under section 1075 of this title. A form substantially as follows is suggested as appropriate:

**OATH OF ELECTOR FOR VOTING IN THE \_\_\_\_\_  
ELECTION TO BE HELD ON \_\_\_\_\_, 19\_\_\_\_**

I do hereby swear (or affirm) that—

- (1) I am a citizen of the United States;
- (2) I was born \_\_\_\_\_;
- (3) For \_\_\_\_\_ years preceding this election my home residence (not military residence) has been \_\_\_\_\_

\_\_\_\_\_  
(Street and number or rural route)

\_\_\_\_\_  
(City, town, or village)

\_\_\_\_\_  
(County)

\_\_\_\_\_  
(State)

- (4) I am serving (check appropriate blank)—
- (a) in the armed forces \_\_\_\_\_ ( ) ;
  - (b) in the merchant marine of the United States \_\_\_\_\_ ( ) ;
  - (c) as a civilian outside the United States and its Territories  
officially attached to and serving with the armed  
forces \_\_\_\_\_ ( ) ;

and

(5) I have not voted and do not intend to vote in this election at any address other than the above; and that I have not received or offered, do not expect to receive, have not paid, offered, or promised to pay, contributed, offered, or promised to contribute to another to be paid or used, any money or other valuable thing as a compensation or reward for the giving of a vote at this election, and have not made any promise to influence the giving or withholding of any such vote.

\_\_\_\_\_  
Voter must write his usual signature here, and  
oath must be administered and attested.

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_

\_\_\_\_\_  
Officer, noncommissioned officer in one of the  
highest four enlisted grades, petty officer, or  
other person authorized to administer this  
oath, shall sign his name here.

\_\_\_\_\_  
Officer or other person signing above shall print  
or type his grade, rank, rating, or title clearly  
here.

(b) It is further recommended that each State authorize officers, noncommissioned officers in the highest four enlisted grades, and petty officers, of the armed forces, and members of the merchant marine of the United States designated by the Secretary of Commerce, to administer the oaths required by its law for application for, and voting by, absentee ballot by the persons covered by section 1074 of this title.

**§ 1080. Style and marking of envelope; inserts; return envelope;  
size and weight of ballots**

(a) In order that the envelope in which an absentee ballot and return envelope are mailed to a person covered by section 1074 of this title may be identified by postal officials and other authorities as containing an election ballot, it is recommended that the following be printed in red on the face of the envelope:

- (1) Two parallel horizontal bars, one-quarter inch wide, one-quarter inch apart, and extending across the face, with the top bar one and one-quarter inches from the top.

(2) The words "Official Election Balloting Material—Via Air Mail", or similar language as State law prescribes, between the bars.

(3) The words "Free U. S. Postage, Including Air Mail", in a box in the upper right corner.

(4) An appropriate inscription or blanks for the return address of the sender, in the upper left corner.

(b) It is further recommended—

(1) that the gummed flap of the return envelope for the ballot be separated from the balloting material by waxed paper or other protective insert to minimize the possibility that the balloting material will stick together;

(2) that the voting instructions include a procedure to be followed by the voter if the balloting material does stick together, such as a notation of the facts on the back of the envelope, signed by the voter and the witness;

(3) that so far as possible each return envelope be pre-addressed by the election official, to minimize action necessary by the voter and to assure a legible and proper address; and

(4) that each State reduce as far as possible the size and weight of its envelopes, ballots, and voting instructions, to minimize costs and speed up the transporting of balloting material.

#### § 1081. Notification of elections

(a) It is recommended that the secretary of state of each State inform the Secretaries of the Army, Navy, Air Force, Treasury, and Commerce of each primary, general, and special election to be held in that State at which persons covered by section 1074 of this title may vote by absentee ballot. The notification should be sent by registered mail at least 90 days before election day and should contain substantially the following information:

STATE OF \_\_\_\_\_

1. Date of election \_\_\_\_\_
2. Type of election (general, special, or primary) \_\_\_\_\_
3. Governmental units to which it applies \_\_\_\_\_
4. (a) Officers to be elected \_\_\_\_\_
- (b) Constitutional amendments or other proposals to be voted upon \_\_\_\_\_
5. The following may vote at this election:
  - (a) Members of the armed forces \_\_\_\_\_
  - (b) Members of the merchant marine of the United States \_\_\_\_\_
  - (c) Civilians outside the United States and its Territories officially attached to and serving with the armed forces \_\_\_\_\_
6. (a) The Federal post card application is acceptable as an application for a ballot from the following:
  - (1) Members of the armed forces \_\_\_\_\_
  - (2) Members of the merchant marine of the United States \_\_\_\_\_
  - (3) Civilians outside the United States and its Territories officially attached to and serving with the armed forces \_\_\_\_\_
- (b) What action is necessary for the applicant to take if the post card is not acceptable as an application \_\_\_\_\_
7. Earliest date State will receive application \_\_\_\_\_
8. Earliest date the ballot will be mailed \_\_\_\_\_
9. Last day ballot may be received back to be counted \_\_\_\_\_

\_\_\_\_\_  
Secretary of State,  
State of \_\_\_\_\_

Date: \_\_\_\_\_

(b) Whenever practicable and compatible with military and merchant-marine operations, the Secretaries of the Army, Navy, Air



Force, Treasury, and Commerce shall each have the information supplied under subsection (a) made available to the persons covered by section 1074 of this title.

**§ 1082. Extension of time limit**

It is recommended that each State that, under its laws, will not have its absentee ballots available for mailing to the persons covered by section 1074 of this title at least 45 days before a primary, general, or special election, amend its laws to make the ballots so available.

**§ 1083. Transmission, delivery, and return of post cards, ballots, etc.**

(a) Whenever practicable and compatible with military and merchant-marine operations, the Secretaries of the Army, Navy, Air Force, Treasury, and Commerce, the Postmaster General, and other appropriate authorities shall—

(1) cooperate with appropriate State officers and agencies in sending State absentee ballots and envelopes for them to and from the persons covered by section 1074 of this title;

(2) cooperate in the execution by those persons of oaths required in connection with those ballots; and

(3) take all reasonable measures to facilitate the transmission, delivery, and return of post cards, ballots, envelopes, and instructions for voting, mailed to or by those persons.

(b) Whenever practicable and compatible with military and merchant-marine operations, ballots executed outside of the United States shall be returned by air.

**§ 1084. Administration**

(a) The Secretaries of the military departments shall each administer this chapter for the members of the armed forces under his jurisdiction and for civilians officially attached to, and serving outside the United States with, those forces.

(b) Except when the Coast Guard is operating as a service in the Navy, the Secretary of the Treasury shall administer this chapter for members of the Coast Guard and for civilians officially attached to, and serving outside the United States with, the Coast Guard.

(c) The Secretary of Commerce shall administer this chapter for members of the merchant marine of the United States.

(d) The Secretaries of the Army, Navy, Air Force, Treasury, and Commerce, may each delegate any function he has under this chapter to any other of those Secretaries, if that Secretary consents.

**§ 1085. Prevention of fraud, coercion, and undue influence; free discussion; acts done in good faith**

(a) Each person concerned with the administration of this chapter shall take all steps necessary to—

(1) prevent fraud;

(2) protect voters against coercion; and

(3) safeguard the integrity and secrecy of the ballots cast.

(b) No officer, noncommissioned officer, or petty officer of the armed forces may—

(1) attempt to influence a member of the armed forces to vote or not to vote for a particular candidate; or

(2) require a member of the armed forces to march to any voting place.

(c) Nothing in this chapter prohibits the free discussion of political issues or candidates for political office.

(d) No act done in good faith under this chapter by a member of the armed forces, an officer or employee of the Department of Commerce, or a member of the merchant marine of the United States, while exercising his judgment as to what is practicable and compatible with military and merchant-marine operations, is a violation of any law defining offenses against the elective franchise.

#### **§ 1086. Free postage**

Whether sent individually or in bulk, official post cards, ballots, voting instructions, and envelopes referred to in this chapter are free of postage, including air mail postage, in the United States mails.

### **CHAPTER 57.—DECORATIONS AND AWARDS**

Sec.

1121. Legion of Merit: award.

1122. Medal for Merit: award.

1123. Right to wear badges of military societies.

#### **§ 1121. Legion of Merit: award**

The President, under regulations to be prescribed by him, may award a decoration called the "Legion of Merit", having suitable appurtenances and devices and not more than four degrees, to any member of the armed forces of the United States or of any friendly foreign nation who, after September 8, 1939, has distinguished himself by exceptionally meritorious conduct in performing outstanding services.

#### **§ 1122. Medal for Merit: award**

The President, under regulations to be prescribed by him, may award a decoration called the "Medal for Merit", having distinctive appurtenances and devices and only one degree, to any civilian of any nation prosecuting the war in existence on July 20, 1942, under the joint declaration of the United Nations, as then constituted, or of any other friendly foreign nation, who, after September 8, 1939, has distinguished himself by exceptionally meritorious conduct in performing outstanding services. The Medal for Merit may be awarded to a civilian of a foreign nation but only for performing an exceptionally meritorious or courageous act in the furtherance of the war efforts of the United Nations as then constituted.

#### **§ 1123. Right to wear badges of military societies**

(a) A member of the Army, Navy, Air Force, or Marine Corps who is a member of a military society originally composed of men who served in an armed force of the United States during the Revolutionary War, the War of 1812, the Mexican War, the Civil War, the Spanish-American War, the Philippine Insurrection, or the Chinese Relief Expedition of 1900 may wear, on occasions of ceremony, the distinctive badges adopted by that society.

(b) A member of the Army, Navy, Air Force, or Marine Corps who is a member of the Army and Navy Union of the United States

may wear, on public occasions of ceremony, the distinctive badges adopted by that society.

## CHAPTER 59.—SEPARATION

Sec.

1161. Commissioned officers: limitations on dismissal.

1162. Reserves: discharge.

1163. Reserve components: members; limitations on separation.

1164. Warrant officers: separation for age.

1165. Regular warrant officers: separation during three-year probationary period.

1166. Regular warrant officers: elimination for unfitness or unsatisfactory performance.

1167. Regular warrant officers: severance pay.

### § 1161. Commissioned officers: limitations on dismissal

(a) No commissioned officer may be dismissed from any armed force except—

(1) by sentence of a general court-martial;

(2) in commutation of a sentence of a general court-martial;

or

(3) in time of war, by order of the President.

(b) The President may drop from the rolls of any armed force any commissioned officer (1) who has been absent without authority for at least three months, or (2) who is sentenced to confinement in a Federal or State penitentiary or correctional institution after having been found guilty of an offense by a court other than a court-martial or other military court, and whose sentence has become final.

### § 1162. Reserves: discharge

Subject to other provisions of this title, reserve commissioned officers may be discharged at the pleasure of the President. Other Reserves may be discharged under regulations prescribed by the Secretary concerned.

### § 1163. Reserve components: members; limitations on separation

(a) An officer of a reserve component who has at least three years of service as a commissioned officer may not be separated from that component without his consent except under an approved recommendation of a board of officers convened by an authority designated by the Secretary concerned, or by the approved sentence of a court-martial. This subsection does not apply to a separation under subsection (b) of this section or under section 1003 of this title, to a dismissal under section 1161 (a) of this title, or to a transfer under section 3352 or 8352 of this title.

(b) The President or the Secretary concerned may drop from the rolls of the armed force concerned any Reserve (1) who has been absent without authority for at least three months, or (2) who is sentenced to confinement in a Federal or State penitentiary or correctional institution after having been found guilty of an offense by a court other than a court-martial or other military court, and whose sentence has become final.

(c) A member of a reserve component who is separated therefrom for cause, except under subsection (b), is entitled to a discharge under honorable conditions unless—

(1) he is discharged under conditions other than honorable under an approved sentence of a court-martial or under the approved findings of a board of officers convened by an authority designated by the Secretary concerned; or

(2) he consents to a discharge under conditions other than honorable with a waiver of proceedings of a court-martial or a board.

**§ 1164. Warrant officers; separation for age**

(a) Unless retired or separated on or before the expiration of that period, each male warrant officer shall be retired or separated from his armed force not later than 60 days after the date when he becomes 62 years of age, except as provided by section 47a of title 5.

(b) Unless retired or separated on or before the expiration of that period, each female warrant officer shall be retired or separated from her armed force not later than 60 days after the date when she becomes 55 years of age, except as provided by section 47a of title 5.

(c) The Secretary concerned may defer, for not more than four months, the separation under subsection (a) or (b) of any warrant officer if, because of unavoidable circumstances, evaluation of his physical condition and determination of his entitlement to retirement or separation for physical disability require hospitalization or medical observation that cannot be completed before the date when he would otherwise be required to be retired or separated under this section.

**§ 1165. Regular warrant officers: separation during three-year probationary period**

The Secretary concerned may terminate the regular appointment of any permanent regular warrant officer at any time within three years after the date when the officer accepted his original permanent appointment as a warrant officer in that component. A warrant officer who is separated under this section is not entitled to severance pay, but may be enlisted under section 515 of this title.

**§ 1166. Regular warrant officers: elimination for unfitness or unsatisfactory performance**

(a) Under such regulations as the Secretary concerned may prescribe, and subject to the recommendations of a board of officers or a selection board under section 560 of this title, a permanent regular warrant officer who is eligible for retirement under any provision of law shall be retired under that law if his records and reports establish his unfitness or unsatisfactory performance of duty. If he is not eligible for retirement under any provision of law, but since the date when he accepted his original permanent appointment as a regular warrant officer he has had at least three years of active service that could be credited to him under section 311 of title 37, he shall be separated with severance pay computed under section 1167 (b) of this title. However, instead of being paid severance pay he may be enlisted under section 515 of this title. If he does not have three years of such service, he shall be separated under section 1165 of this title.

(b) The Secretary concerned may defer, for not more than four months, the retirement or separation under subsection (a) of any warrant officer if, because of unavoidable circumstances, evaluation



of his physical condition and determination of his entitlement to retirement or separation for physical disability require hospitalization or medical observation that cannot be completed before the date when he would otherwise be required to be retired or separated under this section.

**§ 1167. Regular warrant officers: severance pay**

(a) The severance pay of a permanent regular warrant officer who is separated under section 564 (a) (3) of this title is computed by multiplying his years of active service that could be credited to him under section 311 of title 37, but not more than 12, by twice the monthly basic pay to which he is entitled at the time of separation.

(b) The severance pay of a permanent regular warrant officer who is separated under section 1166 of this title is computed by multiplying his years of active service that could be credited to him under section 311 of title 37, but not more than 12, by the monthly basic pay to which he is entitled at the time of separation.

(c) For the purposes of this section, a part of the year that is six months or more is counted as a whole year, and a part of a year that is less than six months is disregarded.

(d) The acceptance of severance pay under this section does not deprive a person of any retirement benefits from the United States. However, there shall be deducted from each of his retirement payments so much thereof as is based on the service for which he has received severance pay under this section, until the total deductions equal the amount of the severance pay.

**CHAPTER 61.—RETIREMENT OR SEPARATION FOR  
PHYSICAL DISABILITY**

Sec.

- 1201. Regulars and members on active duty for more than 30 days: retirement.
- 1202. Regulars and members on active duty for more than 30 days: temporary disability retired list.
- 1203. Regulars and members on active duty for more than 30 days: separation.
- 1204. Members on active duty for 30 days or less; disability from injury: retirement.
- 1205. Members on active duty for 30 days or less; disability from injury: temporary disability retired list.
- 1206. Members on active duty for 30 days or less; disability from injury: separation.
- 1207. Disability from intentional misconduct or willful neglect: separation.
- 1208. Computation of service.
- 1209. Transfer to inactive status list instead of separation.
- 1210. Members on temporary disability retired list: periodic physical examination; final determination of status.
- 1211. Members on temporary disability retired list: return to active duty; promotion.
- 1212. Disability severance pay.
- 1213. Effect of separation on benefits and claims.
- 1214. Right to full and fair hearing.
- 1215. Members other than Regulars: applicability of laws.
- 1216. Secretaries: powers, functions, and duties.
- 1217. Cadets, midshipmen, and aviation cadets: chapter does not apply to.

**§ 1201. Regulars and members on active duty for more than 30 days: retirement**

Upon a determination by the Secretary concerned that a member of a regular component of the armed forces entitled to basic pay, or

any other member of the armed forces entitled to basic pay who has been called or ordered to active duty (other than for training) for a period of more than 30 days, is unfit to perform the duties of his office, grade, rank, or rating because of physical disability incurred while entitled to basic pay, the Secretary may retire the member, with retired pay computed under section 1401 of this title, if the Secretary also determines that—

- (1) based upon accepted medical principles, the disability is of a permanent nature;
- (2) the disability is not the result of the member's intentional misconduct or willful neglect, and was not incurred during a period of unauthorized absence; and
- (3) either—
  - (A) the member has at least 20 years of service computed under section 1208 of this title; or
  - (B) the disability is at least 30 percent under the standard schedule of rating disabilities in use by the Veterans' Administration at the time of the determination; and either—
    - (i) the member has at least eight years of service computed under section 1208 of this title;
    - (ii) the disability is the proximate result of performing active duty; or
    - (iii) the disability was incurred in line of duty in time of war or national emergency.

**§ 1202. Regulars and members on active duty for more than 30 days: temporary disability retired list**

Upon a determination by the Secretary concerned that a member of a regular component of the armed forces entitled to basic pay, or any other member of the armed forces entitled to basic pay who has been called or ordered to active duty (other than for training) for a period of more than 30 days, would be qualified for retirement under section 1201 of this title but for the fact that his disability is not determined to be of a permanent nature, the Secretary shall, if he also determines that accepted medical principles indicate that the disability may be of a permanent nature, place the member's name on the temporary disability retired list, with retired pay computed under section 1401 of this title.

**§ 1203. Regulars and members on active duty for more than 30 days: separation**

Upon a determination by the Secretary concerned that a member of a regular component of the armed forces entitled to basic pay, or any other member of the armed forces entitled to basic pay who has been called or ordered to active duty (other than for training) for a period of more than 30 days, is unfit to perform the duties of his office, grade, rank, or rating because of physical disability incurred while entitled to basic pay, the member may be separated from his armed force, with severance pay computed under section 1212 of this title, if the Secretary also determines that—

- (1) the member has less than 20 years of service computed under section 1208 of this title;

(2) the disability is not the result of the member's intentional misconduct or willful neglect, and was not incurred during a period of unauthorized absence;

(3) based upon accepted medical principles, the disability is or may be of a permanent nature; and

(4) either—

(A) the disability is less than 30 percent under the standard schedule of rating disabilities in use by the Veterans' Administration at the time of the determination, and the disability was (i) the proximate result of performing active duty, or (ii) incurred in line of duty in time of war or national emergency;

(B) the disability is less than 30 percent under the standard schedule of rating disabilities in use by the Veterans' Administration at the time of the determination, and the member has at least eight years of service computed under section 1208 of this title; or

(C) the disability is at least 30 percent under the standard schedule of rating disabilities in use by the Veterans' Administration at the time of the determination, the disability was neither the proximate result of performing active duty nor incurred in line of duty in time of war or national emergency, and the member has less than eight years of service computed under section 1208 of this title on the date when he would otherwise be retired under section 1201 of this title or placed on the temporary disability retired list under section 1202 of this title.

However, if the member is eligible for transfer to the inactive status list under section 1209 of this title, and so elects, he shall be transferred to that list instead of being separated.

#### **§ 1204. Members on active duty for 30 days or less; disability from injury: retirement**

Upon a determination by the Secretary concerned that a member of the armed forces not covered by section 1201, 1202, or 1203 of this title is unfit to perform the duties of his office, grade, rank, or rating because of physical disability resulting from an injury, the Secretary may retire the member with retired pay computed under section 1401 of this title, if the Secretary also determines that—

(1) based upon accepted medical principles, the disability is of a permanent nature;

(2) the disability is the proximate result of performing active duty or inactive-duty training;

(3) the disability is not the result of the member's intentional misconduct or willful neglect, and was not incurred during a period of unauthorized absence; and

(4) either—

(A) the member has at least 20 years of service computed under section 1208 of this title; or

(B) the disability is at least 30 percent under the standard schedule of rating disabilities in use by the Veterans' Administration at the time of the determination.

**§ 1205. Members on active duty for 30 days or less; disability from injury: temporary disability retired list**

Upon a determination by the Secretary concerned that a member of the armed forces not covered by section 1201, 1202, or 1203 of this title would be qualified for retirement under section 1204 of this title but for the fact that his disability is not determined to be of a permanent nature, the Secretary shall, if he also determines that accepted medical principles indicate that the disability may be of a permanent nature, place the member's name on the temporary disability retired list, with retired pay computed under section 1401 of this title.

**§ 1206. Members on active duty for 30 days or less; disability from injury: separation**

Upon a determination by the Secretary concerned that a member of the armed forces not covered by section 1201, 1202, or 1203 of this title is unfit to perform the duties of his office, grade, rank, or rating because of physical disability resulting from an injury, the member may be separated from his armed force, with severance pay computed under section 1212 of this title, if the Secretary also determines that—

(1) the member has less than 20 years of service computed under section 1208 of this title;

(2) the disability is not the result of the member's intentional misconduct or willful neglect, and was not incurred during a period of unauthorized absence;

(3) based upon accepted medical principles, the disability is or may be of a permanent nature; and

(4) the disability is less than 30 percent under the standard schedule of rating disabilities in use by the Veterans' Administration at the time of the determination, and was the proximate result of performing active duty or inactive-duty training.

However, if the member is eligible for transfer to the inactive status list under section 1209 of this title, and so elects, he shall be transferred to that list instead of being separated.

**§ 1207. Disability from intentional misconduct or willful neglect: separation**

Each member of the armed forces who incurs a physical disability that, in the determination of the Secretary concerned, makes him unfit to perform the duties of his office, grade, rank, or rating, and that resulted from his intentional misconduct or willful neglect or was incurred during a period of unauthorized absence, shall be separated from his armed force without entitlement to any benefits under this chapter.

**§ 1208. Computation of service**

(a) For the purposes of this chapter, a member of a regular component shall be credited with the service described in clause (1) or that described in clause (2), whichever is greater:

(1) The service that he is considered to have for the purpose of separation or mandatory elimination from the active list.

(2) The sum of—



(A) his active service as a member of the armed forces, a nurse, a reserve nurse after February 2, 1901, a contract surgeon, a contract dental surgeon, or an acting dental surgeon;

(B) his active service as a member of the Coast and Geodetic Survey or the Public Health Service; and

(C) his service while participating in exercises or performing duties under sections 502, 503, 504, and 505 of title 32.

(b) A member of the armed forces who is not a member of a regular component shall be credited, for the purposes of this chapter, with the number of years of service that he would count if he were computing his years of service under section 1333 of this title.

#### **§ 1209. Transfer to inactive status list instead of separation**

Any member of the armed forces who has at least 20 years of service computed under section 1332 of this title, and who would be qualified for retirement under this chapter but for the fact that his disability is less than 30 percent under the standard schedule of rating disabilities in use by the Veterans' Administration at the time of the determination, may elect, instead of being separated under this chapter, to be transferred to the inactive status list under section 1335 of this title and, if otherwise eligible, to receive retired pay under chapter 71 of this title upon becoming 60 years of age.

#### **§ 1210. Members on temporary disability retired list: periodic physical examination; final determination of status**

(a) A physical examination shall be given at least once every 18 months to each member of the armed forces whose name is on the temporary disability retired list to determine whether there has been a change in the disability for which he was temporarily retired. He may be required to submit to those examinations while his name is carried on that list. If a member fails to report for an examination under this subsection, after receipt of proper notification, his disability retired pay may be terminated. However, payments to him shall be resumed if there was just cause for his failure to report. If payments are so resumed, they may be made retroactive for not more than one year.

(b) The Secretary concerned shall make a final determination of the case of each member whose name is on the temporary disability retired list upon the expiration of five years after the date when the member's name was placed on that list. If, at the time of that determination, the physical disability for which the member's name was carried on the temporary disability retired list still exists, it shall be considered to be of a permanent nature.

(c) If, as a result of a periodic examination under subsection (a), or upon a final determination under subsection (b), it is determined that the member's physical disability is of a permanent nature and is at least 30 percent under the standard schedule of rating disabilities in use by the Veterans' Administration at the time of the determination, his name shall be removed from the temporary disability retired list and he shall be retired under section 1201 or 1204 of this title, whichever applies.

(d) If, as a result of a periodic examination under subsection (a), or upon a final determination under subsection (b), it is determined that the member's physical disability is of a permanent nature and is less than 30 percent under the standard schedule of rating disabilities in use by the Veterans' Administration at the time of the determination, and if he has at least 20 years of service computed under section 1208 of this title, his name shall be removed from the temporary disability retired list and he shall be retired under section 1201 or 1204 of this title, whichever applies, with retired pay computed under section 1401 of this title.

(e) If, as a result of a periodic examination under subsection (a), or upon a final determination under subsection (b), it is determined that the member's physical disability is less than 30 percent under the standard schedule of rating disabilities in use by the Veterans' Administration at the time of the determination, and if he has less than 20 years of service computed under section 1208 of this title, his name shall be removed from the temporary disability retired list and he may be separated under section 1203 or 1206 of this title, whichever applies.

(f) If, as a result of a periodic examination under subsection (a), or upon a final determination under subsection (b), it is determined that the member is physically fit to perform the duties of his office, grade, rank, and rating, the Secretary shall treat him as provided in section 1211 of this title.

(g) Any member of the armed forces whose name is on the temporary disability retired list, and who is required to travel to submit to a physical examination under subsection (a), is entitled to the travel and transportation allowances authorized for members in his retired grade traveling in connection with temporary duty while on active duty.

(h) If his name is not sooner removed, the disability retired pay of a member whose name is on the temporary disability retired list terminates upon the expiration of five years after the date when his name was placed on that list.

#### **§ 1211. Members on temporary disability retired list: return to active duty; promotion**

(a) With his consent, any member of the Army or the Air Force whose name is on the temporary disability retired list, and who is found to be physically fit to perform the duties of his office, grade, or rank under section 1210 (f) of this title, shall—

(1) if a commissioned officer of a regular component, be recalled to active duty and, as soon as practicable, may be reappointed by the President, by and with the advice and consent of the Senate, to the active list of his regular component in the regular grade held by him when his name was placed on the temporary disability retired list, or in the next higher regular grade;

(2) if a warrant officer of a regular component, be recalled to active duty and, as soon as practicable, be reappointed by the Secretary concerned in the regular grade held by him when his name was placed on the temporary disability retired list, or in the next higher regular warrant grade;

(3) if an enlisted member of a regular component, be reenlisted in the regular grade held by him when his name was placed on

the temporary disability retired list or in the next higher regular enlisted grade;

(4) if a commissioned, warrant, or enlisted Reserve, be reappointed or reenlisted as a Reserve for service in his reserve component in the reserve grade held by him when his name was placed on the temporary disability retired list, or appointed or enlisted in the next higher reserve commissioned, warrant, or enlisted grade, as the case may be;

(5) if a commissioned, warrant, or enlisted member of the Army National Guard of the United States or the Air National Guard of the United States when the disability was incurred, and if he cannot be reappointed or reenlisted as a Reserve for service therein, be appointed or enlisted as a Reserve for service in the Army Reserve or the Air Force Reserve, as the case may be, in a grade corresponding to the reserve grade held by him when his name was placed on the temporary disability retired list, or in the next higher reserve commissioned, warrant, or enlisted grade, as the case may be; and

(6) if a member of the Army, or the Air Force, who has no regular or reserve grade, be reappointed or reenlisted in the Army, or the Air Force, as the case may be, in the temporary grade held by him when his name was placed on the temporary disability retired list, or appointed or enlisted in the next higher temporary grade.

(b) With his consent, any member of the naval service or of the Coast Guard whose name is on the temporary disability retired list, and who is found to be physically fit to perform the duties of his office, grade, rank, or rating under section 1210 (f) of this title, shall—

(1) if he held an appointment in a commissioned grade in a regular component when his name was placed on the temporary disability retired list, be recalled to active duty and, as soon as practicable, may be reappointed by the President, by and with the advice and consent of the Senate, to his regular component in the grade permanently held by him when his name was placed on the temporary disability retired list, or in the next higher grade;

(2) if he held an appointment in the grade of warrant officer, W-1, in a regular component when his name was placed on the temporary disability retired list, be recalled to active duty and, as soon as practicable, be reappointed by the Secretary concerned in his regular component in the grade permanently held by him when his name was placed on the temporary disability retired list, or may be appointed by the President, by and with the advice and consent of the Senate, to the grade of chief warrant officer, W-2;

(3) if he held a permanent enlisted grade in a regular component when his name was placed on the temporary disability retired list, be reenlisted in his regular component in the grade permanently held by him when his name was placed on the temporary disability retired list, or in the next higher enlisted grade;

(4) if he was a member of the Fleet Reserve or the Fleet Marine Corps Reserve when his name was placed on the temporary disability retired list, resume his status in the Fleet Reserve or the Fleet Marine Corps Reserve in the grade held by him when

his name was placed on the temporary disability retired list, or in the next higher enlisted grade; and

(5) if a member of a reserve component, be reappointed or reenlisted in his reserve component in the grade permanently held by him when his name was placed on the temporary disability retired list or, if that permanent grade is not chief petty officer or master sergeant, in the next higher grade in that reserve component.

(c) If a member is appointed, reappointed, enlisted, or reenlisted, or resumes his status in the Fleet Reserve or the Fleet Marine Corps Reserve, under subsection (a) or (b), his status on the temporary disability retired list terminates on the date of his appointment, reappointment, enlistment, reenlistment, or resumption, as the case may be. However, if such a member does not consent to the action proposed under subsection (a) or (b), his status on the temporary disability retired list and his disability retired pay shall be terminated as soon as practicable.

(d) Disability retired pay of a member covered by this section terminates—

(1) on the date when he is recalled to active duty under subsection (a) (1) or (2) or subsection (b) (1), (2), or (3), for an officer of a regular component;

(2) on the date when he resumes his status in the Fleet Reserve or the Fleet Marine Corps Reserve under subsection (b) (5), for a member of the Fleet Reserve or the Fleet Marine Corps Reserve; and

(3) on the date when he is appointed, reappointed, enlisted, or reenlisted, for any other member of the armed forces.

(e) Whenever seniority in grade or years of service is a factor in determining the qualifications of a member of the armed forces for promotion, each member who has been appointed, reappointed, enlisted, or reenlisted, under subsection (a) or (b), shall, when his name is placed on a lineal list, a promotion list, or any similar list, have the seniority in grade and be credited with the years of service authorized by the Secretary concerned. The authorized strength in any regular grade is automatically increased to the minimum extent necessary to give effect to each appointment made in that grade under this section. An authorized strength so increased is increased for no other purpose, and while he holds that grade the officer whose appointment caused the increase is counted for the purpose of determining when other appointments, not under this section, may be made in that grade.

(f) Action under this section shall be taken on a fair and equitable basis, with regard being given to the probable opportunities for advancement and promotion that the member might reasonably have had if his name had not been placed on the temporary disability retired list.

#### **§ 1212. Disability severance pay**

(a) Upon separation from his armed force under section 1203 or 1206 of this title, a member is entitled to disability severance pay computed by multiplying (1) his years of service, but not more than 12, computed under section 1208 of this title, by (2) the highest of the following amounts:



(A) Twice the amount of monthly basic pay to which he would be entitled if serving (i) on active duty on the date when he is separated and (ii) in the grade and rank in which he was serving on the date when his name was placed on the temporary disability retired list, or if his name was not carried on that list, on the date when he is separated.

(B) Twice the amount of monthly basic pay to which he would be entitled if serving (i) on active duty on the date when his name was placed on the temporary disability retired list or, if his name was not carried on that list, on the date when he is separated, and (ii) in any temporary grade or rank higher than that described in clause (A), in which he served satisfactorily as determined by the Secretary of the military department or the Secretary of the Treasury, as the case may be, having jurisdiction over the armed force from which he is separated.

(C) Twice the amount of monthly basic pay to which he would be entitled if serving (i) on active duty on the date when his name was placed on the temporary disability retired list or, if his name was not carried on that list, on the date when he is separated, and (ii) in the permanent regular or reserve grade to which he would have been promoted had it not been for the physical disability for which he is separated and which was found to exist as a result of a physical examination for promotion.

(D) Twice the amount of monthly basic pay to which he would be entitled if serving (i) on active duty on the date when his name was placed on the temporary disability retired list or, if his name was not carried on that list, on the date when he is separated, and (ii) in the temporary grade or rank to which he would have been promoted had it not been for the physical disability for which he is separated and which was found to exist as a result of a physical examination for promotion, if his eligibility for promotion was required to be based on cumulative years of service or years in grade.

(b) For the purposes of subsection (a), a part of a year of active service that is six months or more is counted as a whole year, and a part of a year that is less than six months is disregarded.

(c) The amount of disability severance pay received under this section shall be deducted from any compensation for the same disability to which the former member of the armed forces or his dependents become entitled under any law administered by the Veterans' Administration. However, no deduction may be made from any death compensation to which his dependents become entitled after his death.

### § 1213. Effect of separation on benefits and claims

Unless a person who has received disability severance pay again becomes a member of an armed force, the Coast and Geodetic Survey, or the Public Health Service, he is not entitled to any payment from the armed force from which he was separated for, or arising out of, his service before separation, under any law administered by one of those services or for it by another of those services. However, this section does not prohibit the payment of money to a person who has received disability severance pay, if the money was due him on the date of his separation or if a claim by him is allowed under any law.

**§ 1214. Right to full and fair hearing**

No member of the armed forces may be retired or separated for physical disability without a full and fair hearing if he demands it.

**§ 1215. Members other than Regulars: applicability of laws**

The laws and regulations that entitle any retired member of a regular component of the armed forces to pay, rights, benefits, or privileges extend the same pay, rights, benefits, or privileges to any other member of the armed forces who is not a member of a regular component and who is retired, or to whom retired pay is granted, because of physical disability.

**§ 1216. Secretaries: powers, functions, and duties**

(a) The Secretary concerned shall prescribe regulations to carry out this chapter within his department.

(b) The Secretary concerned has all powers, functions, and duties incident to the determination under this chapter of—

(1) the fitness for active duty of any member of an armed force under his jurisdiction;

(2) the percentage of disability of any such member at the time of his separation from active duty;

(3) the suitability of any member for reappointment, reenlistment, or reentry upon active duty in an armed force under his jurisdiction; and

(4) the entitlement to, and payment of, disability severance pay to any member of an armed force under his jurisdiction.

(c) The Secretary concerned or the Administrator of Veterans' Affairs, as prescribed by the President, has the powers, functions, and duties under this chapter incident to hospitalization, reexaminations, and the payment of disability retired pay within his department or agency.

**§ 1217. Cadets, midshipmen, and aviation cadets: chapter does not apply to**

This chapter does not apply to cadets at the United States Military Academy, the United States Air Force Academy, or the Coast Guard Academy, to midshipmen of the Navy, or to aviation cadets.

**CHAPTER 63.—RETIREMENT FOR AGE**

**Sec.**

1255. Age 55: female regular warrant officers.

1263. Age 62: warrant officers.

1275. Computation of retired pay: law applicable.

**§ 1255. Age 55: female regular warrant officers**

(a) A female permanent regular warrant officer who has at least 20 years of active service that could be credited to her under section 311 of title 37, and who is at least 55 years of age, shall be retired 60 days after she becomes that age, except as provided by section 47a of title 5.

(b) The Secretary concerned may defer, for not more than four months, the retirement under subsection (a) of any warrant officer if, because of unavoidable circumstances, evaluation of her physical condition and determination of her entitlement to retirement or separation for physical disability require hospitalization or medical observa-

tion that cannot be completed before the date when she would otherwise be required to retire under this section.

**§ 1263. Age 62: warrant officers**

(a) Unless retired under section 1255 or 1305 of this title, a permanent regular warrant officer who has at least 20 years of active service that could be credited to him under section 311 of title 37, and who is at least 62 years of age, shall be retired 60 days after he becomes that age, except as provided by section 47a of title 5.

(b) The Secretary concerned may defer, for not more than four months, the retirement under subsection (a) of any warrant officer if, because of unavoidable circumstances, evaluation of his physical condition and determination of his entitlement to retirement or separation for physical disability require hospitalization or medical observation that cannot be completed before the date when he would otherwise be required to retire under this section.

**§ 1275. Computation of retired pay: law applicable**

A member of the armed forces retired under this chapter is entitled to retired pay computed under chapter 71 of this title.

**CHAPTER 65.—RETIREMENT FOR LENGTH OF SERVICE**

Sec.

1293. Twenty years or more: warrant officers.

1305. Thirty years or more: regular warrant officers.

1315. Computation of retired pay: law applicable.

**§ 1293. Twenty years or more: warrant officers**

The Secretary concerned may, upon the warrant officer's request, retire a warrant officer of any armed force under his jurisdiction who has at least 20 years of active service that could be credited to him under section 311 of title 37.

**§ 1305. Thirty years or more: regular warrant officers**

(a) A permanent regular warrant officer who has at least 30 years of active service that could be credited to him under section 311 of title 37 shall be retired 60 days after he completes that service, except as provided by section 47a of title 5.

(b) The Secretary concerned may defer, for not more than four months, the retirement under subsection (a) of any warrant officer if, because of unavoidable circumstances, evaluation of his physical condition and determination of his entitlement to retirement or separation for physical disability require hospitalization or medical observation that cannot be completed before the date when he would otherwise be required to retire under this section.

(c) Under such regulations as he may prescribe, the Secretary concerned may defer the retirement under subsection (a) of any warrant officer upon the recommendation of a board of officers and with the consent of the warrant officer, but not later than 60 days after he becomes 62 years of age.

**§ 1315. Computation of retired pay: law applicable**

A member of the armed forces retired under this chapter is entitled to retired pay computed under chapter 71 of this title.

## CHAPTER 67.—RETIRED PAY FOR NON-REGULAR SERVICE

### Sec.

- 1331. Age and service requirements.
- 1332. Computation of years of service in determining entitlement to retired pay.
- 1333. Computation of years of service in computing retired pay.
- 1334. Time not creditable toward years of service.
- 1335. Inactive status list.
- 1336. Service credited for retired pay benefits not excluded for other benefits.
- 1337. Limitation on active duty.

### § 1331. Age and service requirements

(a) Except as provided in subsection (c), a person is entitled, upon application, to retired pay computed under section 1401 of this title, if—

- (1) he is at least 60 years of age;
- (2) he has performed at least 20 years of service computed under section 1332 of this title;
- (3) he performed the last eight years of qualifying service as a member of a reserve component of any of the armed forces, of the Army or the Air Force without component, or of any other category named in section 1332 (a) (1) of this title except as a member of (A) a regular component of an armed force, (B) the Fleet Reserve and the Fleet Marine Corps Reserve, or (C) a regular and a reserve component of an armed force at the same time; and
- (4) he is not entitled, under any other provision of law, to retired pay from an armed force or retainer pay as a member of the Fleet Reserve or the Fleet Marine Corps Reserve.

(b) Application for retired pay under this section must be made to the Secretary of the military department, or the Secretary of the Treasury, as the case may be, having jurisdiction at the time of application over the armed force in which the applicant is serving or last served.

(c) No person who, before August 16, 1945, was a Reserve of an armed force, or a member of the Army without component or other category covered by section 1332 (a) (1) of this title except a regular component, is eligible for retired pay under this chapter, unless he performed active duty after April 5, 1917, and before November 12, 1918, or after September 8, 1940, and before January 1, 1947.

### § 1332. Computation of years of service in determining entitlement to retired pay

(a) Except as provided in subsection (b), for the purpose of determining whether a person is entitled to retired pay under section 1331 of this title, his years of service are computed by adding—

- (1) his years of service, before July 1, 1949, in—
  - (A) the armed forces;
  - (B) the federally recognized National Guard before June 15, 1933;
  - (C) a federally recognized status in the National Guard before June 15, 1933;
  - (D) the Naval Reserve Force;
  - (E) the Naval Militia that conformed to the standards prescribed by the Secretary of the Navy; and



(F) the National Naval Volunteers; and

(2) each one-year period, after July 1, 1949, in which he has been credited with at least 50 points on the following basis—

(A) one point for each day of—

(i) active service; or

(ii) service under sections 316, 503, 504, and 505 of title 32 while performing annual training duty or while attending a prescribed course of instruction at a school designated as a service school by law or by the Secretary concerned;

if that service conformed to required standards and qualifications;

(B) one point for each attendance at a drill or period of equivalent instruction that was prescribed for that year by the Secretary concerned and conformed to the requirements prescribed by law, including attendance under section 502 of title 32; and

(C) points at the rate of 15 a year for membership in a reserve component of an armed force, in the Army or the Air Force without component, or in any other category covered by subsection (a) (1) except a regular component.

(b) The following service may not be counted under subsection (a) :

(1) Service (other than active service) in an inactive section of the Organized Reserve Corps or of the Army Reserve, or in an inactive section of the officers' section of the Air Force Reserve.

(2) Service (other than active service) after June 30, 1949, while on the Honorary Retired List of the Naval Reserve or of the Marine Corps Reserve.

(3) Service in the inactive National Guard.

(4) Service in a non-federally recognized status in the National Guard.

(5) Service in the Fleet Reserve or the Fleet Marine Corps Reserve.

(6) Service in any status other than that as a commissioned officer, warrant officer, flight officer, or enlisted member.

### § 1333. Computation of years of service in computing retired pay

For the purpose of computing the retired pay of a person under this chapter, his years of service and any fraction of such a year are computed by adding—

(1) the days of service credited to him under section 1332 (a)

(2) (A) of this title;

(2) one day for each point credited to him under clause (B) or (C) of section 1332 (a) (2) of this title, but not more than 60 days in any one year; and

(3) 50 days for each year before July 1, 1949, and proportionately for each fraction of a year, of service (other than active service) in a reserve component of an armed force, in the Army or the Air Force without component, or in any other category covered by section 1332 (a) (1) of this title except a regular component;

and by dividing the sum of that addition by 360.

+

**§ 1334. Time not creditable toward years of service**

(a) Service in an inactive status may not be counted in any computation of years of service under this chapter.

(b) Time spent after retirement or transfer to the Retired Reserve may not be credited in any computation of years of service under this chapter.

**§ 1335. Inactive status list**

(a) A person who would be eligible for retired pay under this chapter but for the fact that he is under 60 years of age may be transferred, at his request and by direction of the Secretary concerned, to such inactive status list as may be established for members of his armed force, other than members of a regular component.

(b) While on an inactive status list under subsection (a), a person is not required to participate in any training or other program prescribed for his component.

(c) The Secretary may at any time recall to active status a member who is on an inactive status list under subsection (a).

**§ 1336. Service credited for retired pay benefits not excluded for other benefits**

No period of service included wholly or partly in determining a person's right to, or the amount of, retired pay under this chapter may be excluded in determining his eligibility for any annuity, pension, or old-age benefit, under any other law, on account of civilian employment by the United States or otherwise, or in determining the amount payable under that law, if that service is otherwise properly credited under it.

**§ 1337. Limitation on active duty**

No member of the armed forces may be ordered to active duty solely for the purpose of qualifying him for retired pay under this chapter.

**CHAPTER 69.—RETIRED GRADE**

Sec.

1371. Warrant officers: general rule.

1372. Grade on retirement for physical disability: members of armed forces.

1373. Higher grade for later physical disability: retired officers recalled to active duty.

1375. Entitlement to commission: commissioned officers advanced on retired list.

1376. Retired lists.

**§ 1371. Warrant officers: general rule**

Unless entitled to a higher retired grade under some other provision of law, a warrant officer retires, as determined by the Secretary concerned, in the permanent regular or reserve warrant officer grade, if any, that he held on the day before the date of his retirement, or in any higher warrant officer grade in which he served on active duty satisfactorily, as determined by the Secretary, for a period of more than 30 days.

**§ 1372. Grade on retirement for physical disability: members of armed forces**

Unless entitled to a higher retired grade under some other provision of law, any member of an armed force who is retired for physical disability under section 1201 or 1204 of this title, or whose name is placed on the temporary disability retired list under section 1202 or 1205 of this title, is entitled to the grade equivalent to the highest of the following:

- (1) The grade or rank in which he is serving on the date when his name is placed on the temporary disability retired list or, if his name was not carried on that list, on the date when he is retired.
- (2) The highest temporary grade or rank in which he served satisfactorily, as determined by the Secretary of the armed force from which he is retired.
- (3) The permanent regular or reserve grade to which he would have been promoted had it not been for the physical disability for which he is retired and which was found to exist as a result of his physical examination for promotion.
- (4) The temporary grade to which he would have been promoted had it not been for the physical disability for which he is retired, if eligibility for that promotion was required to be based on cumulative years of service or years of service in grade and the disability was discovered as a result of his physical examination for promotion.

**§ 1373. Higher grade for later physical disability: retired officers recalled to active duty**

Unless entitled to a higher retired grade under some other provision of law, a member of an armed force whose retired pay is computed under section 1402 (d) of this title is entitled, upon his release from active duty, to the grade equivalent to the grade or rank upon which his retired pay is based under that section.

**§ 1375. Entitlement to commission: commissioned officers advanced on retired list**

A commissioned officer of the Army, Navy, Air Force, or Marine Corps who is advanced on a retired list is entitled to a commission in the grade to which he is advanced.

**§ 1376. Retired lists**

(a) Under regulations prescribed by the Secretary concerned, there shall be maintained retired lists containing the names of the Reserves of the armed forces under his jurisdiction who are in the Retired Reserve.

(b) The Secretary concerned shall maintain a temporary disability retired list containing the names of members of the armed forces under his jurisdiction placed thereon under sections 1202 and 1205 of this title. The list shall be published annually in the official register or other official publication of the armed force concerned.

## CHAPTER 71.—COMPUTATION OF RETIRED PAY

Sec.

1401. Computation of retired pay.

1402. Recomputation of retired or retainer pay to reflect later active duty.

1403. Disability retired pay: treatment under title 26.

1404. Applicability of section 47a of title 5.

### § 1401. Computation of retired pay

The monthly retired pay of a person entitled thereto under this subtitle is computed according to the following table. For each case covered by a section of this title named in the column headed "For sections", retired pay is computed by taking, in order, the steps prescribed opposite it in columns 1, 2, 3, and 4, as modified by the applicable footnotes. However, if a person would otherwise be entitled to retired pay computed under more than one pay formula of this table or of any other provision of law, he is entitled to be paid under the applicable formula that is most favorable to him. Section references below are to sections of this title.

Formula No.	For sections	Column 1 Take	Column 2 Multiply by	Column 3 Add	Column 4 Subtract
1	1201 1204	Monthly basic pay <sup>1</sup> of grade to which member is entitled under section 1372.	As member elects— (1) 2½% of years of service credited to him under section 1208; <sup>2</sup> or (2) the percentage of disability on date when retired.		Excess over 75% of pay upon which computation is based.
2	1202 1205	Monthly basic pay <sup>1</sup> of grade to which member is entitled under section 1372.	As member elects— (1) 2½% of years of service credited to him under section 1208; <sup>2</sup> or (2) the percentage of disability on date when his name was placed on temporary disability retired list.	Amount necessary to increase product of columns 1 and 2 to 50% of pay upon which computation is based.	Excess over 75% of pay upon which computation is based.
3	1331	Monthly basic pay <sup>2</sup> of highest grade held satisfactorily by person at any time in the armed forces.	2½% of years of service credited to him under section 1333.		Excess over 75% of pay upon which computation is based.
4	564 1255 1263 1293 1305	Monthly basic pay to which member would have been entitled if he had served on active duty in his retired grade on day before retirement, or if the pay of that grade is less than the pay of any warrant grade satisfactorily held by him on active duty, the monthly basic pay of that warrant officer grade.	2½% of years of service that may be credited to him in computing basic pay. <sup>3</sup>		Excess over 75% of pay upon which computation is based.

<sup>1</sup> Compute at rates applicable on date of retirement or date when member's name was placed on temporary disability retired list, as the case may be, and adjust to reflect later changes in applicable permanent rates.

<sup>2</sup> Compute at rates applicable on date when retired pay is granted.

<sup>3</sup> Before applying percentage factor, credit a part of a year that is six months or more as a whole year, and disregard a part of a year that is less than six months.



### § 1402. Recomputation of retired or retainer pay to reflect later active duty

(a) A member of an armed force who has been retired or has become entitled to retainer pay, and who thereafter serves on active duty, is entitled, upon release from that duty, to recompute his retired or retainer pay as follows:

Column 1 Take	Column 2 Multiply by	Column 3 Add	Column 4 Subtract
Monthly basic pay or base and longevity pay, as the case may be, of the grade in which he would be eligible to retire if he were retiring upon that release from active duty.	2½% of the sum of— (1) the years of service that may be credited to him in computing retired or retainer pay; and (2) his years of active service after retirement or becoming entitled to retainer pay. <sup>1</sup>		Excess over 75% of pay upon which computation is based.

<sup>1</sup> Before applying percentage factor, credit a part of a year that is six months or more as a whole year, and disregard a part of a year that is less than six months.

(b) A member of an armed force who has been retired other than for physical disability, and who while on active duty incurs a physical disability of at least 30 percent for which he would otherwise be eligible for retired pay under chapter 61 of this title, is entitled, upon his release from active duty, to retired pay under subsection (d).

(c) A member of an armed force who—

(1) was retired for physical disability under section 1201 or 1204 of this title or any other law or whose name is on the temporary disability retired list;

(2) incurs, while on active duty after retirement or after his name was placed on that list, a physical disability that is in addition to or that aggravates the physical disability for which he was retired or for which his name was placed on the temporary disability retired list; and

(3) is qualified under section 1201, 1202, 1204, or 1205 of this title;

is entitled, upon his release from active duty, to retired pay under subsection (d).

(d) A member of an armed force covered by subsection (b) or (c) may elect to receive either (1) the retired pay to which he became entitled when he retired, or (2) retired pay computed as follows:

Column 1 Take	Column 2 Multiply by	Column 3 Add	Column 4 Subtract
Highest monthly basic pay that member received while on active duty after retirement or after date when his name was placed on temporary disability retired list, as the case may be.	As member elects— (1) 2½% of years of service credited under section 1208 of this title; <sup>1</sup> or (2) the highest percentage of disability attained while on active duty after retirement or after the date when his name was placed on temporary disability retired list, as the case may be. <sup>1</sup>	Add amount necessary to increase product of columns 1 and 2 to 50% of pay upon which computation is based, if member is on temporary disability retired list.	Excess over 75% of pay upon which computation is based.

<sup>1</sup> Before applying percentage factor, credit a part of a year that is six months or more as a whole year, and disregard a part of a year that is less than six months.

If, while on active duty after retirement or after his name was placed on the temporary disability retired list, a member covered by this subsection was promoted to a higher grade in which he served satisfactorily, as determined by the Secretary concerned, he is entitled to retired pay based on the monthly basic pay to which he would be entitled if he were on active duty in that higher grade.

#### **§ 1403. Disability retired pay: treatment under title 26**

That part of the retired pay of a member of an armed force, computed under formula No. 1 or 2 of section 1401, or under section 1402 (d), of this title on the basis of years of service, which exceeds the retired pay that he would receive if it were computed on the basis of percentage of disability is not considered as a pension, annuity, or similar allowance for personal injury, or sickness, resulting from active service in the armed forces, under section 104 (a) of title 26.

#### **§ 1404. Applicability of section 47a of title 5**

The retirement provisions of this title are subject to section 47a of title 5.

### **CHAPTER 73.—ANNUITIES BASED ON RETIRED OR RETAINER PAY**

Sec.

- 1431. Election of annuity: members of armed forces.
- 1432. Election of annuity: former members of armed forces.
- 1433. Mental incompetency of member.
- 1434. Kinds of annuities that may be elected.
- 1435. Eligible beneficiaries.
- 1436. Computation of reduction in retired pay.
- 1437. Payment of annuity.
- 1438. Deposits for amounts not deducted.
- 1439. Refund of amounts deducted from retired pay.
- 1440. Annuities not subject to legal process.
- 1441. Annuities in addition to other payments.
- 1442. Recovery of annuity erroneously paid.
- 1443. Board of Actuaries.
- 1444. Regulations; reports to Congress; determinations.

#### **§ 1431. Election of annuity: members of armed forces**

(a) This section applies to all members of the armed forces except—

- (1) members whose names are on a retired list or who are in the Retired Reserve;
- (2) Reserves on an inactive status list;
- (3) members assigned to the inactive National Guard;
- (4) cadets at the United States Military Academy, the United States Air Force Academy, or the Coast Guard Academy; and
- (5) midshipmen.

(b) To provide an annuity under section 1434 of this title, a person covered by subsection (a) may elect to receive a reduced amount of the retired or retainer pay to which he may become entitled as a result of service in his armed force. The election must be made before he completes 18 years of service for which he is entitled to credit in the computation of his basic pay. However, if, because of military operations, he is missing in action, interned in a neutral country, captured by a hostile force, or beleaguered or besieged, and for that

reason is unable to make the election before completing 18 years of that service, he may make the election within six months after he returns to the jurisdiction of his armed force.

(c) An election made under subsection (b) may be changed or revoked by the elector before his retirement or before he becomes entitled to retired or retainer pay. However, unless made under section 1433, the change or revocation is not effective if he is retired or becomes entitled to retired or retainer pay within five years after the date of the change or revocation. If he revokes the election, he may not change or withdraw the revocation.

(d) A person who was retired or granted retired or retainer pay before November 1, 1953, and who elected within 180 days after that date to receive a reduced amount of that pay to provide an annuity, may not revoke that election.

#### **§ 1432. Election of annuity: former members of armed forces**

A person who was a former member of an armed force on November 1, 1953, and who is granted retired or retainer pay after that date, may, at the time he is granted that pay, make an election as provided in section 1431 of this title.

#### **§ 1433. Mental incompetency of member**

If a person who would be entitled to make an election under section 1431 or 1432 of this title is determined to be mentally incompetent by medical officers of the armed force concerned or of the Veterans' Administration, or by a court of competent jurisdiction, and for that reason cannot make the election within the prescribed time, the Secretary concerned may make an election for that person upon the request of his spouse or, if there is no spouse, of his children who would be eligible to be made beneficiaries under section 1435 of this title. If the person for whom the Secretary has made an election is later determined to be mentally competent by medical officers of the Veterans' Administration or by a court of competent jurisdiction, he may, within 180 days after that determination, change or revoke that election. However, deductions made from his retired or retainer pay before that date may not be refunded.

#### **§ 1434. Kinds of annuities that may be elected**

(a) The annuity that a person is entitled to elect under section 1431 or 1432 of this title may be 50, 25, or 12½ percent, as specified by the elector at the time of the election, of the reduced amount of his retired or retainer pay. He may make the annuity payable—

(1) to, or on behalf of, the surviving spouse, ending when the spouse dies or remarries;

(2) in equal shares to, or on behalf of, the surviving children eligible for the annuity at the time each payment is due, ending when there is no surviving eligible child; or

(3) to, or on behalf of, the surviving spouse, and after the death or remarriage of that spouse, in equal shares to, or on behalf of, the surviving children, ending when there is no surviving eligible child.

(b) A person may elect to provide both the annuity provided in clause (1) of subsection (a) and that provided in clause (2) of sub-

section (a), but the combined amount of the annuities may not be more than 50 percent of his reduced retired or retainer pay.

(c) Any annuity under subsection (a), or any combination of annuities under subsection (b), may provide, at the elector's option, that no deduction may be made from his retired or retainer pay after the last day of the month in which there is no beneficiary who would be eligible for the annuity if the elector died.

#### **§ 1435. Eligible beneficiaries**

Only the following persons are eligible to be made the beneficiaries of, or to receive payments under, an annuity elected under this chapter by a member of the armed forces:

(1) The spouse of the member on the date when the member is retired or becomes entitled to retired or retainer pay or, if the member was already retired or entitled to retired or retainer pay on November 1, 1953, the spouse on that date.

(2) The children of the member who are—

(A) unmarried;

(B) under 18 years of age or incapable of supporting themselves because of a mental defect or physical incapacity existing before their eighteenth birthday;

(C) legitimate or adopted children of, or stepchildren in fact dependent for their support upon, the member;

(D) living on the date when the member is retired or becomes entitled to retired or retainer pay or, if the member was already retired or entitled to retired or retainer pay on November 1, 1953, living on that date; and

(E) born on or before the date prescribed in clause (D).

#### **§ 1436. Computation of reduction in retired pay**

The reduction in the retired or retainer pay of any person who elects an annuity under this chapter shall be computed by the armed force concerned as of the date when the person becomes eligible for that pay. It shall be computed under an actuarial equivalent method based on (1) appropriate actuarial tables selected by the Board of Actuaries, and (2) an interest rate of 3 percent a year, or such other rate as the Secretary of the Treasury, after considering the average yield on outstanding marketable long-term obligations of the United States during the preceding six months, may specify by August 1 of any year for the following year. The method and tables shall be those in effect on the date as of which the computation is made.

#### **§ 1437. Payment of annuity**

Each annuity payable under this chapter accrues as of the first day of the month in which the person upon whose reduced pay the annuity is based dies. Payments shall be made in equal installments and not later than the fifteenth day of each month following that month. However, no annuity accrues for the month in which entitlement thereto ends.

#### **§ 1438. Deposits for amounts not deducted**

If, for any period, a person who has been retired or has become entitled to retired or retainer pay, and who has elected an annuity under this chapter, is not entitled to retired or retainer pay, he must



deposit in the Treasury the amount that would otherwise have been deducted from his pay for that period to provide the annuity.

#### **§ 1439. Refund of amounts deducted from retired pay**

If a person whose name is on the temporary disability retired list of an armed force, and who has elected an annuity under this chapter, has his name removed from that list for any reason other than retirement or grant of retired pay, he is entitled to a refund of the difference between the amount by which his retired pay was reduced to provide the annuity and the cost of an amount of term insurance equal to the protection provided for his dependents during the period that he was on that list.

#### **§ 1440. Annuities not subject to legal process**

No annuity payable under this chapter is assignable or subject to execution, levy, attachment, garnishment, or other legal process.

#### **§ 1441. Annuities in addition to other payments**

An annuity under this chapter is in addition to any pension or other payment to which the beneficiary is entitled under any other provision of law, and may not be considered as income under any law administered by the Veterans' Administration.

#### **§ 1442. Recovery of annuity erroneously paid**

In addition to other methods of recovery provided by law, the Secretary concerned may authorize the recovery, by deduction from later payments to a person, of any amount erroneously paid to him under this chapter. However, recovery is not required if, in the judgment of the Secretary concerned and the Comptroller General, there has been no fault by the person to whom the amount was erroneously paid and recovery would be contrary to the purposes of this chapter or against equity and good conscience.

#### **§ 1443. Board of Actuaries**

To advise on the administration of this chapter, the President shall convene at least once a year a Board of Actuaries composed of the Government Actuary, the Chief Actuary of the Social Security Administration, and an actuary who is a member of the Society of Actuaries. The compensation of the member from the Society of Actuaries shall be prescribed by the President.

#### **§ 1444. Regulations; reports to Congress; determinations**

(a) The President shall prescribe regulations to carry out this chapter. Those regulations shall, so far as practicable, be uniform for the armed forces, the Coast and Geodetic Survey, and the Public Health Service.

(b) The President shall report to Congress annually on the administration of this chapter.

(c) Determinations and certifications of eligibility for, and payments of, annuities and other payments or refunds under this chapter shall be made by the department concerned. However, in the case of a department other than a military department, payments shall be made through the disbursing facilities of the Department of the Treasury.

**CHAPTER 75.—DEATH BENEFITS: CARE OF THE DEAD**

Sec.

- 1481. Recovery, care, and disposition of remains: decedents covered.
- 1482. Expenses incident to death.
- 1483. Prisoners of war and interned enemy aliens.
- 1484. Pensioners, indigent patients, and persons who die on military reservations.
- 1485. Dependents of members of armed forces; death while outside United States.
- 1486. Other citizens of United States.
- 1487. Temporary interment.
- 1488. Removal of remains.

**§ 1481. Recovery, care, and disposition of remains: decedents covered**

(a) The Secretary concerned may provide for the recovery, care, and disposition of the remains of—

(1) any Regular of an armed force, or member of an armed force without component, under his jurisdiction who dies while on active duty;

(2) any Reserve of an armed force under his jurisdiction who dies while (A) on active duty, (B) performing authorized travel to or from that duty, (C) on authorized inactive-duty training, or (D) hospitalized or undergoing treatment at the expense of the United States for injury incurred, or disease contracted, while on that duty or training or while performing that travel;

(3) any member of the Army National Guard or Air National Guard who dies while entitled to pay from the United States and while (A) on active duty, (B) performing authorized travel to or from that duty, (C) on authorized inactive-duty training, or (D) hospitalized or undergoing treatment at the expense of the United States for injury incurred, or disease contracted, while on that duty or training or while performing that travel;

(4) any member of the Army Reserve Officers' Training Corps, Naval Reserve Officers' Training Corps, or Air Force Reserve Officers' Training Corps who dies while (A) attending a training camp, (B) on an authorized practice cruise, (C) performing authorized travel to or from such a camp or cruise, or (D) hospitalized or undergoing treatment at the expense of the United States for injury incurred, or disease contracted, while attending such a camp, while on such a cruise, or while performing that travel;

(5) any accepted applicant for enlistment in an armed force under his jurisdiction;

(6) any person who has been discharged from an enlistment in an armed force under his jurisdiction while a patient in a United States hospital, and who continues to be such a patient until the date of his death;

(7) any retired member of an armed force under his jurisdiction who becomes a patient in a United States hospital while he is on active duty for a period of more than 30 days, and who continues to be such a patient until the date of his death; and

(8) any military prisoner who dies while in his custody.

(b) This section applies to each person covered by subsection (a) (1)–(7) even though he may have been temporarily absent from active duty, with or without leave, at the time of his death, unless he had been dropped from the rolls of his organization before his death.

### § 1482. Expenses incident to death

(a) Incident to the recovery, care, and disposition of the remains of any decedent covered by section 1481 of this title, the Secretary concerned may pay the necessary expenses of—

- (1) recovery and identification of the remains;
- (2) notification to the next of kin or other appropriate person;
- (3) preparation of the remains for burial, including cremation if requested by the person designated to direct disposition of the remains;
- (4) furnishing of a uniform or other clothing;
- (5) furnishing of a casket or urn, or both, with outside box;
- (6) hearse service;
- (7) funeral director's services;
- (8) transportation of the remains, and round-trip transportation and prescribed allowances for an escort of one person, to the place selected by the person designated to direct disposition of the remains or, if such a selection is not made, to a national or other cemetery which is selected by the Secretary and in which burial of the decedent is authorized;
- (9) interment of the remains; and
- (10) presentation of a flag of the United States to the person designated to direct disposition of the remains, except in the case of a military prisoner who dies while in the custody of the Secretary and while under a sentence that includes a discharge.

(b) If an individual pays any expense payable by the United States under this section, the Secretary concerned shall reimburse him or his representative in an amount not larger than that normally incurred by the Secretary in furnishing the supply or service concerned. If reimbursement by the United States is also authorized under another provision of law or regulation, the individual may elect under which provision to be reimbursed.

(c) Only the following persons may be designated to direct disposition of the remains of a decedent covered by this chapter:

- (1) The surviving spouse of the decedent.
- (2) Blood relatives of the decedent.
- (3) Adoptive relatives of the decedent.
- (4) If no person covered by clauses (1)–(3) can be found, a person standing in loco parentis to the decedent.

### § 1483. Prisoners of war and interned enemy aliens

The Secretary concerned may provide for the care and disposition of the remains of prisoners of war and interned enemy aliens who die while in his custody and, incident thereto, pay the necessary expenses of—

- (1) notification to the next of kin or other appropriate person;
- (2) preparation of the remains for burial, including cremation;
- (3) furnishing of clothing;
- (4) furnishing of a casket or urn, or both, with outside box;
- (5) transportation of the remains to the cemetery or other place selected by the Secretary; and
- (6) interment of the remains.

**§ 1484. Pensioners, indigent patients, and persons who die on military reservations**

If proper disposition of the remains cannot otherwise be made, the Secretary concerned may provide for the care and disposition of the remains of pensioners and indigent patients who die in hospitals operated by his department and of persons who die on the military reservations of that department and, incident thereto, pay the necessary expenses of—

- (1) notification to the next of kin or other appropriate person;
- (2) preparation of the remains for burial, including cremation;
- (3) furnishing of clothing;
- (4) furnishing of a casket or urn, or both, with outside box;
- (5) transportation of the remains to a cemetery selected by the Secretary; and
- (6) interment of the remains.

**§ 1485. Dependents of members of armed forces; death while outside United States**

(a) The Secretary concerned may provide for, and pay the necessary expenses of, transporting the remains of any dependent of a member of an armed force under his jurisdiction who is on active duty at a place outside the United States, if the dependent dies while residing with that member or while traveling to or from that place. Transportation of remains under this section may be made to the home of the decedent or to any other place that the Secretary determines to be the appropriate place of interment.

(b) The Secretary may furnish mortuary services and supplies, on a reimbursable basis, for persons covered by subsection (a), if (1) that action is practicable, and (2) local commercial mortuary services and supplies are not available or the Secretary believes that their cost is prohibitive.

(c) Reimbursement for mortuary services and supplies furnished under this section shall be collected and credited to appropriations available, at the time of reimbursement, for those services and supplies.

**§ 1486. Other citizens of United States**

(a) If local commercial mortuary services and supplies are not available, or if he believes that their cost is prohibitive, the Secretary concerned may furnish those services and supplies on a reimbursable basis in the case of any of the following citizens of the United States who die outside the United States:

(1) Any employee of a humanitarian agency accredited to the armed forces, such as the American Red Cross and the United Services Organization.

(2) Any civilian performing a service directly for the Secretary because of employment by an agency under a contract with the Secretary.

(3) Any officer or member of a crew of a merchant vessel operated by or for the United States through the Secretary.

(4) Any person who is on duty with an armed force under the jurisdiction of the Secretary and who is paid from non-appropriated funds.



(5) Upon the specific request of the Department of State, any person not otherwise covered by this section.

(6) Any dependent of a person who is covered by this section, if the dependent is living outside the United States with that person at the time of death.

(b) The Secretary may furnish transportation of the remains of persons covered by this section, on a reimbursable basis, to a port of entry in the United States.

(c) Reimbursement for services, supplies, and transportation furnished under this section shall be collected and credited to appropriations available, at the time of reimbursement, for those services, supplies, and transportation.

#### **§ 1487. Temporary interment**

Whenever necessary for the temporary interment of remains pending transportation under this chapter to a designated cemetery, the Secretary concerned may acquire, and provide for the maintenance of, grave sites in commercial cemeteries, or he may acquire the right to use such grave sites for burial purposes. If the death occurs outside the United States and a temporary commercial grave site is not available on a reasonable basis, the Secretary may acquire land, or the right to use land, necessary for the temporary interment of the remains under this chapter.

#### **§ 1488. Removal of remains**

If a cemetery on a military reservation, including an installation cemetery, has been or is to be discontinued, the Secretary concerned may provide for the removal of remains from that cemetery to any other cemetery. With respect to any deceased member of an armed force under his jurisdiction whose last service terminated honorably by death or otherwise, the Secretary may also provide for the removal of the remains from a place of temporary interment, or from an abandoned grave or cemetery, to a national cemetery.

### **CHAPTER 77.—POSTHUMOUS COMMISSIONS AND WARRANTS**

Sec.

1521. Posthumous commissions.

1522. Posthumous warrants.

1523. Posthumous commissions and warrants: effect on pay and allowances.

#### **§ 1521. Posthumous commissions**

(a) The President may issue, or have issued, an appropriate commission in the name of a member of the armed forces who, after September 8, 1939—

(1) was appointed to a commissioned grade but was unable to accept the appointment because of death in line of duty;

(2) successfully completed the course at an officers' training school and was recommended for appointment to a commissioned grade by the commanding officer or officer in charge of the school but was unable to accept the appointment because of death in line of duty; or

(3) was officially recommended for appointment or promotion to a commissioned grade and the recommendation for whose

appointment or promotion was approved by the Secretary concerned but was unable to accept the promotion or appointment because of death in line of duty.

(b) A commission issued under subsection (a) shall issue as of the date of the appointment, recommendation, or approval, as the case may be, and the member's name shall be carried on the records of the military or executive department concerned as if he had served in the grade, and branch if any, in which posthumously commissioned, from the date of the appointment, recommendation, or approval to the date of his death.

#### **§ 1522. Posthumous warrants**

(a) The Secretary concerned may issue, or have issued, an appropriate warrant in the name of a member of the armed forces who, after September 8, 1939, was officially recommended for appointment or promotion to a grade other than a commissioned grade but was unable to accept the appointment or promotion because of death in line of duty.

(b) A warrant issued under subsection (a) shall issue as of the date of the recommendation, and the member's name shall be carried on the records of the military or executive department concerned as if he had served in the grade to which posthumously appointed or promoted from the date of the recommendation to the date of his death.

#### **§ 1523. Posthumous commissions and warrants: effect on pay and allowances**

No person is entitled to any bonus, gratuity, pay, or allowance because of a posthumous commission or warrant.

### **CHAPTER 79.—CORRECTION OF MILITARY RECORDS**

Sec.

1551. Correction of name after separation from service under an assumed name.

1552. Correction of military records: claims incident thereto.

#### **§ 1551. Correction of name after separation from service under an assumed name**

The Secretary of the military department concerned shall issue a certificate of discharge or an order of acceptance of resignation in the true name of any person who was separated from the Army, Navy, Air Force, or Marine Corps honorably or under honorable conditions after serving under an assumed name during a war with another nation or people, upon application by, or on behalf of, that person, and upon proof of his identity. However, a certificate or order may not be issued under this section if the name was assumed to conceal a crime or to avoid its consequences.

#### **§ 1552. Correction of military records: claims incident thereto**

(a) The Secretary of a military department, under procedures established by him and approved by the Secretary of Defense, and acting through boards of civilians of the executive part of that military department, may correct any military record of that department when he considers it necessary to correct an error or remove an injustice. Under procedures prescribed by him, the Secretary of the Treasury may in the same manner correct any military record of the

Coast Guard. Except when procured by fraud, a correction under this section is final and conclusive on all officers of the United States.

(b) No correction may be made under subsection (a) unless the claimant or his heir or legal representative files a request therefor before October 26, 1961, or within three years after he discovers the error or injustice, whichever is later. However, a board established under subsection (a) may excuse a failure to file within three years after discovery if it finds it to be in the interest of justice.

(c) The department concerned may pay, from applicable current appropriations, a claim for the loss of pay, allowances, compensation, emoluments, or other pecuniary benefits, or for the repayment of a fine or forfeiture, if, as a result of correcting a record under this section, the amount is found to be due the claimant on account of his or another's service in the Army, Navy, Air Force, Marine Corps, or Coast Guard, as the case may be. If the claimant is dead, the money shall be paid, upon demand, to his legal representative. However, if no demand for payment is made by a legal representative, the money shall be paid—

(1) to the surviving spouse, heir, or beneficiaries, in the order prescribed by the law applicable to that kind of payment;

(2) if there is no such law covering order of payment, in the order set forth in section 2771 of this title; or

(3) as otherwise prescribed by the law applicable to that kind of payment.

A claimant's acceptance of a settlement under this section fully satisfies the claim concerned. This section does not authorize the payment of any claim compensated by private law before October 25, 1951.

(d) Applicable current appropriations are available to continue the pay, allowances, compensation, emoluments, and other pecuniary benefits of any person who was paid under subsection (c), and who, because of the correction of his military record, is entitled to those benefits, but for not longer than one year after the date when his record is corrected under this section if he is not reenlisted in, or appointed or reappointed to, the grade to which those payments relate. Without regard to qualifications for reenlistment, or appointment or reappointment, the Secretary concerned may reenlist a person in, or appoint or reappoint him to, the grade to which payments under this section relate.

(e) No payment may be made under this section for a benefit to which the claimant might later become entitled under the laws and regulations administered by the Administrator of Veterans' Affairs.

(f) The Secretary of Defense for the military departments, and the Secretary of the Treasury for the Coast Guard, shall report to Congress every six months on claims paid under this section during the period covered by the report. The report shall include for each claim the name of the claimant, a brief description of the claim, and a statement of the amount paid.

## CHAPTER 81.—CIVILIAN EMPLOYEES

Sec.

1581. Appointment: professional and scientific services.

1582. Professional and scientific services: reports to Congress on appointments.

1583. Employment of certain persons without compensation.

1584. Laws relating to employment of non-citizens: not applicable to research and development activities.

**§ 1581. Appointment: professional and scientific services**

(a) The Secretary of Defense may establish not more than six civilian positions to carry out research and development relating to the national defense, military medicine, and other activities of the Department of Defense that require the services of specially qualified scientific or professional personnel.

(b) Subject to the Civil Service Commission's approval as to rates, the Secretary may fix the compensation for positions established under subsection (a). However, the compensation may not be less than \$10,000 or more than \$15,000 a year.

(c) Positions established under subsection (a) are in the classified civil service of the United States. However, if the Civil Service Commission or a person designated by it approves a proposed appointee's qualifications, no competitive examination may be required.

**§ 1582. Professional and scientific services: reports to Congress on appointments**

The Secretary of Defense shall report to Congress each calendar year on the number of positions established under sections 1581, 4021, 7471, and 9021 of this title during that calendar year. The report shall list the name, rate of compensation, functions, and qualifications of each incumbent. However, the Secretary may omit any item if he considers that a full public report on it would be detrimental to the national security. In such a case, he shall present the information, in executive session, to such committees of the Senate and the House of Representatives as are designated by the presiding officers of those bodies.

**§ 1583. Employment of certain persons without compensation**

(a) The Secretary of Defense may employ, without compensation, not more than 10 persons of outstanding experience and ability. However, a person so employed may be allowed transportation, and not more than \$15 a day instead of subsistence, while away from his home or regular place of business pursuant to employment under this section.

(b) The Secretary may, by regulation, exempt persons employed under subsection (a) from sections 281, 283, 284, 434, and 1914 of title 18 and section 99 of title 5.

**§ 1584. Laws relating to employment of non-citizens: not applicable to research and development activities**

Laws prohibiting the employment of, or payment of compensation or expenses to, a person who is not a citizen of the United States do not apply to any expert, scientist, technician, or professional person whose employment in connection with the research and development activities of a military department is determined to be necessary by the Secretary of that department.

**PART III.—TRAINING****CHAP.****101. Training Generally****Sec.****2001**



## CHAPTER 101.—TRAINING GENERALLY

Sec.

2001. Reserve components.

### § 2001. Reserve components

As prescribed by the Secretary concerned, each reserve component except the Army National Guard of the United States and the Air National Guard of the United States shall be divided into training categories according to the kinds and degrees of training, including the number and duration of drills or equivalent duties to be completed in stated periods. The designation of training categories shall be the same for all armed forces and the same within the Ready Reserve and the Standby Reserve.

## PART IV.—SERVICE, SUPPLY, AND PROCUREMENT

CHAP.

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## CHAPTER 131.—PLANNING AND COORDINATION

Sec.

2201. General functions of Secretary of Defense.

2202. Obligation of funds: limitation.

### § 2201. General functions of Secretary of Defense

The Secretary of Defense shall, in support of strategic and logistic plans—

(1) coordinate appropriate activities relating to industrial matters, including plans of the Department of Defense for procurement, production, and distribution;

(2) plan for the military aspects of industrial mobilization;

(3) assign procurement responsibilities among the military departments;

(4) plan for the standardization of items prescribed by section 2451 (c) (1) of this title;

(5) plan for the greatest practicable allocation, on the basis of procurement by a single procurement agency, of the authority to buy technical supplies and common use items used by each of the armed forces;

(6) prepare estimates of potential production, procurement, and personnel for use in evaluating the logistic feasibility of strategic operations;

(7) determine priorities for the segments of the military procurement programs;

(8) supervise subordinate agencies created to consider matters covered by this section;

(9) regroup, combine, or dissolve inter-service agencies operating in the fields of procurement, production, and distribution, so as to promote efficiency and economy;

(10) maintain liaison with other departments and agencies for the proper correlation of military requirements with the civilian economy, particularly with regard to the procurement or disposition of strategic and critical materials and the maintenance of adequate reserves of those materials, and the making of recommendations as to policies in connection therewith; and

(11) assemble and review requirements for material and personnel presented by the Joint Chiefs of Staff and by the production, procurement, and distribution agencies assigned to meet military needs.

#### **§ 2202. Obligation of funds: limitation**

Notwithstanding any other provision of law, an officer or agency of the Department of Defense may obligate funds for procuring, producing, warehousing, or distributing supplies, or for related functions of supply management, only under regulations prescribed by the Secretary of Defense. The purpose of this section is to achieve the efficient, economical, and practical operation of an integrated supply system to meet the needs of the military departments without duplicate or overlapping operations or functions.

### **CHAPTER 133.—FACILITIES FOR RESERVE COMPONENTS**

Sec.

2231. Purpose.

2232. Definitions.

2233. Acquisition.

2234. Location and use.

2235. Administration; other use permitted by Secretary.

2236. Contributions to States; other use permitted by States.

2237. Supervision of construction.

2238. Army National Guard of United States; Air National Guard of United States: limitation on relocation of units.

#### **§ 2231. Purpose**

The purpose of this chapter is to provide for—

(1) the acquisition, by purchase, lease, transfer, construction, expansion, rehabilitation, or conversion, of facilities necessary for the proper development, training, operation, and maintenance of the reserve components of the armed forces;

(2) the joint use of those facilities by units of two or more of those reserve components, to the greatest practicable extent for efficiency and economy;

(3) the use of those facilities, in time of war or national emergency, by those units and other units of the armed forces, to the greatest practicable extent for efficiency and economy; and

(4) any other use of those facilities by the United States, in time of war or national emergency, to the greatest practicable extent for efficiency and economy.

### § 2232. Definitions

In this chapter:

(1) "State" and "Territory" include political subdivisions and military units thereof and tax-supported agencies therein.

(2) "Facility" includes any (A) interest in land, (B) armory or other structure, and (C) storage or other facility normally needed for the administration and training of any unit of the reserve components of the armed forces.

### § 2233. Acquisition

(a) Subject to sections 2234, 2235, 2236, and 2238 of this title and subsection (c) of this section, and after consulting the Committees on Armed Services of the Senate and the House of Representatives, the Secretary of Defense may—

(1) acquire by purchase, lease, or transfer, and construct, expand, rehabilitate, or convert and equip, such facilities as he determines to be necessary to carry out the purposes of this chapter;

(2) contribute to any State or Territory, Puerto Rico, or the District of Columbia such amounts as he determines to be necessary to expand, rehabilitate, or convert facilities owned by it for use jointly by units of two or more of the reserve components of the armed forces; and

(3) contribute to any State or Territory, Puerto Rico, or the District of Columbia such amounts for the acquisition, construction, expansion, rehabilitation, or conversion by it of additional facilities as he determines to be required by any increase in the strength of the Army National Guard of the United States or the Air National Guard of the United States.

(b) Title to property acquired under subsection (a) (1) vests in the United States.

(c) The Secretary of Defense may delegate any of his authority or functions under this chapter to any department, agency, or officer of the Department of Defense.

### § 2234. Location and use

No expenditure or contribution may be made for a facility under section 2233 of this title, unless the Secretary of Defense determines that—

(1) the number of units of the reserve components of the armed forces located or to be located in the area within which the facility is to be provided is not and will not be larger than the number that can reasonably be expected to be maintained at authorized strength, considering the number of persons living in the area who are qualified for membership in those reserve units; and

(2) the plan under which the facility is to be provided makes provision for the greatest practicable use of the facility jointly by units of two or more of those components.

**§ 2235. Administration; other use permitted by Secretary**

(a) The Secretary of Defense, after consulting the Committees on Armed Services of the Senate and the House of Representatives on matters of policy, may—

(1) administer, operate, maintain, and equip facilities constructed, expanded, rehabilitated, or converted under section 2233

(a) (1) of this title or otherwise acquired and used for the purposes of this chapter:

(2) permit persons or organizations other than members and units of the armed forces to use those facilities under such leases or other agreements as he considers appropriate; and

(3) cover the payments received under those leases or agreements into the Treasury to the credit of the appropriation from which the cost of maintaining the facility, including its utilities and services, is paid.

(b) The Secretary may not permit any use or disposition to be made of a facility covered by subsection (a) that would interfere with its use—

(1) for administering and training the reserve components of the armed forces; or

(2) in time of war or national emergency, by other units of the armed forces or by the United States for any other purpose.

**§ 2236. Contributions to States; other use permitted by States**

(a) Contributions under section 2233 of this title are subject to such terms as the Secretary of Defense, after consulting the Committees on Armed Services of the Senate and the House of Representatives, considers necessary for the purposes of this chapter. Except as otherwise agreed when the contribution is made, a facility provided by a contribution under section 2233 (a) (3) of this title may be used jointly by units of two or more reserve components of the armed forces only to the extent that the State or Territory, Puerto Rico, or the District of Columbia, whichever is concerned, considers practicable.

(b) No contribution made for a facility under section 2233 (a) (3) of this title may be more than 75 percent of the cost of the construction to which it is to be applied. For the purpose of computing the cost of construction under this subsection, the amount contributed by the State or Territory, Puerto Rico, or the District of Columbia, whichever is concerned, may not include the cost or market value of any real property that it has contributed.

(c) If a State or Territory, Puerto Rico, or the District of Columbia acquires, constructs, expands, rehabilitates, or converts a facility with amounts contributed under section 2233 of this title, it may—

(1) permit persons or organizations other than members and units of the armed forces to use the facility under such leases or other agreements as it considers appropriate; and

(2) apply amounts received under those leases or agreements to the cost of maintaining the facility.

(d) Except as otherwise agreed when the contribution is made, and except as the agreement is later changed, a State or Territory, Puerto Rico, or the District of Columbia may not permit any use or disposition of the facility that would interfere with its use—

(1) for administering and training the reserve components of the armed forces; or



(2) in time of war or national emergency, by other units of the armed forces or by the United States for any other purpose.

#### **§ 2237. Supervision of construction**

Any construction, expansion, rehabilitation, or conversion under this chapter may be performed under the supervision of the Chief of Engineers of the Army or the Chief of the Bureau of Yards and Docks of the Navy.

#### **§ 2238. Army National Guard of United States; Air National Guard of United States: limitation on relocation of units**

No unit of the Army National Guard of the United States or the Air National Guard of the United States may be relocated or withdrawn under this chapter until the governor of the State or Territory, or Puerto Rico, or the commanding general of the National Guard of the District of Columbia, as the case may be, has been consulted.

### **CHAPTER 135.—ENCOURAGEMENT OF AVIATION**

Sec.

2271. Design competitions: advertisement; selection of winner.

2272. Design competitions: rejection or purchase of designs; contracts; conditions.

2273. Right of United States to design; right of designer to patent; right to sue United States.

2274. Procurement for experimental purposes.

2275. Contracts; review of decisions.

2276. Inspection and audit of plant and books of contractor; criminal provisions.

2277. Appropriations; availability.

2278. Purchase of sample aircraft.

2279. Aircraft: restrictions on alien employees of contractor.

#### **§ 2271. Design competitions: advertisement; selection of winner**

(a) To encourage the development of aviation and to improve the efficiency of aeronautical war material for the Army, Navy, Air Force, and Marine Corps, the Secretary of each military department, before procuring new designs of aircraft, aircraft parts, or aeronautical accessories, shall invite the submission of new designs thereof in competition, as follows.

(b) An invitation for the submission of a design shall be made by advertisement in not less than three leading aeronautical journals for a period of 30 days, and in such other manner as the Secretary of the military department concerned considers advisable. Such an advertisement shall specify a time within which designs and prices may be submitted. This time may not be less than 60 days after the expiration of the 30-day advertising period. Each submission shall be sealed and shall contain the design submitted, a statement of the price for which the design or any part of it would be sold to the United States, and a graduated scale of prices for which the designer is willing to construct all or any part of a designed item. The submission shall be kept sealed until the expiration of the specified time. No design mailed after that time may be considered.

(c) Each advertisement under subsection (b) shall state in general terms the kind of aircraft, aircraft parts, or aeronautical accessories

to be developed and the approximate quantity required. The department concerned shall furnish to each applicant identical detailed information as to the conditions of the competition and the features and characteristics to be developed in the design, listing specifically the measures of merit, expressed in percentages, that are to be applied in determining the merits of the design. These measures of merit apply throughout the competition.

(d) Each design submitted under subsection (b) shall be referred to a board appointed by the Secretary of the military department concerned. The board shall appraise each design as soon as practicable and report the winners to the Secretary. If the Secretary approves the board's report, he shall fix the time and place of a public announcement of the results and notify each competitor. If the Secretary does not approve it, the papers may be returned to the board for revision, or he may choose the winners, as he elects. The decision of the Secretary is final and conclusive. The announcement of the results of the competition shall state the percentages awarded to each feature or characteristic of each of the designs submitted and the price named for each design and each feature thereof, if separable.

(e) If, within 10 days after the announcement of the results of a competition under subsection (d), a competitor makes a reasonable showing in writing to the Secretary of the military department concerned that an error was made in determining the merits of designs submitted and that he was thereby deprived of an award, the Secretary shall at once refer the matter to a board of arbitration for determination. The board of arbitration shall be composed of three skilled aeronautical engineers, one of whom shall be selected by the Secretary, one by the claimant, and the third by the other members. No person may be a member of a board of arbitration if he served on the board of appraisal that judged the competition out of which the arbitration arose. The findings of the board are conclusive if approved by the Secretary. In a competition, three competitors, or less, who have the highest figures of merit may be selected as winners.

**§ 2272. Design competitions: rejection or purchase of designs; contracts; conditions**

(a) If the Secretary of the military department concerned determines that a winner of a design competition under section 2271 of this title is, or can become within a reasonable time, able and equipped to furnish or construct all or part of any designed item, he may contract with that winner for furnishing or constructing it at a reasonable price, but not more than the price submitted with the design, on terms that he considers most advantageous to the United States. However, if the Secretary determines that the winner will not be able to furnish all or part of any designed item, he may buy the design, or a separable part of it, at a fair and reasonable price, but not more than the price submitted with the design.

(b) If the Secretary of the military department concerned determines that none of the designs submitted in a competition is of sufficient merit to justify procurement of a designed item, he need not accept or pay for them.

(c) If the Secretary of the military department concerned determines that the designs submitted by two or more competitors are of

equal merit, or that features in the designs of one competitor are superior to the corresponding features in the designs of another competitor and that the superior features of one design may be substituted for the inferior features of another, he may divide the contracts for furnishing the item equitably among those competitors that submitted designs of equal merit, or he may combine features of superior excellence of different designs in such manner as he determines to be in the best interest of the United States. Payment may be made accordingly to the several competitors at fair and reasonable prices and the contract for the item may be awarded to the competitor or competitors having the highest figures of merit in the competition.

(d) If the Secretary of the military department concerned cannot contract with a winner in a design competition for furnishing or constructing all or part of a designed item, or if he cannot agree with a winner for the purchase of a design at a reasonable price, he may retain the design and advertise according to law for proposals for furnishing or constructing the item. After all proposals are submitted the Secretary may contract with the lowest responsible bidder for furnishing the item, on terms that he considers in the best interest of the United States. However, the Secretary may reject all bids and advertise for other bids with the same or different specifications.

(e) Each seller of designs and each contractor furnishing or constructing aircraft, aircraft parts, or aeronautical accessories under this section shall, if the Secretary of the military department concerned requests it, release claims against the United States arising out of the sale or contract. The release shall be in the form, and shall contain the terms, prescribed by the Secretary.

(f) No contract may be awarded under this section—

(1) to an individual who is not a citizen of the United States;

(2) to a corporation, unless 75 percent of its capital stock is owned by, and all its directors are, citizens of the United States; or

(3) to an individual or a corporation that does not have a manufacturing plant within the United States.

However, the Secretary of the military department concerned may contract with any domestic corporation whose stock is listed on a stock exchange, unless he knows that a majority of its stock is owned or controlled by aliens.

#### **§ 2273. Right of United States to design; right of designer to patent; right to sue United States**

(a) Any executive or military department of the United States may construct or have constructed according to the winning design, and may use, any aircraft, aircraft part, or aeronautical accessory, after payment is completed under a contract made under section 2272 of this title, or after payment for or purchase of the winning design, or a separable part thereof, for that item under that section. An item so constructed may be sold according to law as condemned material. In neither case may any further compensation be paid to the winner of the competition. However, the winner may apply for a patent on any feature of the designed item that was originated by him, and, if the patent is granted, he has exclusive rights under it against all persons except the United States or its vendee under this subsection.

(b) Any person who believes that—

(1) a design developed by him after July 2, 1926, relating to aircraft or an aircraft component, is being used; or

(2) an article embodying a design developed by him after July 2, 1926, relating to aircraft or an aircraft component, is being used or manufactured;

by or for the United States without just compensation to him from the United States or any other source may, within four years from the date of that use or manufacture, sue in the Court of Claims to recover reasonable and entire compensation.

#### **§ 2274. Procurement for experimental purposes**

(a) The Secretary of a military department may buy designs, aircraft, aircraft parts, and aeronautical accessories that he considers necessary for experimental purposes in the development of the best kinds of those items for the Army, Navy, Air Force, or Marine Corps, as the case may be. Purchases under this subsection may be made abroad or in the United States or the Territories, Commonwealths, and possessions, with or without competition and by contract or otherwise.

(b) If, as a result of a purchase under subsection (a), a new or suitable design considered to be the best kind for the Army, Navy, Air Force, or Marine Corps, as the case may be, is developed, the Secretary of the military department concerned may contract for procurement of the item in quantity. Contracts under this subsection are subject to sections 2272 (f) and 2279 of this title but are not subject to sections 2271 (a)–(d) and 2272 (a) of this title.

#### **§ 2275. Contracts; review of decisions**

The Secretary of a military department may award a contract for aircraft, aircraft parts, or aeronautical accessories under this chapter to the person whom he finds to be the lowest responsible bidder who can satisfactorily perform the work to the best advantage of the United States. Except for review by the President or a Federal court, or as otherwise provided by the contract, the decision of the Secretary is not reviewable as to—

(1) the award of the contract;

(2) the interpretation of the contract; or

(3) the application and administration of the contract.

#### **§ 2276. Inspection and audit of plant and books of contractor; criminal provisions**

(a) The manufacturing plant and books of a contractor furnishing or constructing aircraft, aircraft parts, or aeronautical accessories for a military department under this chapter, or that part of the plant which is used for that purpose, are subject at all times to inspection and audit by a person designated by the head of any executive department.

(b) The Secretary of the military department concerned shall keep for 10 years all audits and reports of inspection made for that department under subsection (a). Any committee of Congress may inspect them.

(c) Whoever, by collusion, understanding, or arrangement, deprives or attempts to deprive the United States of the benefit of a



full and free competition under this chapter or of a full and free audit, so far as necessary to disclose the cost of executing the contract, of the books of a person carrying out a contract under this chapter shall be fined not more than \$20,000 or imprisoned for not more than five years, or both.

#### **§ 2277. Appropriations; availability**

Any appropriation available to a military department for the procurement of aircraft, aircraft parts, or aeronautical accessories may be used by that department to buy designs and pay the costs of arbitration under this chapter.

#### **§ 2278. Purchase of sample aircraft**

The Secretary of the Army or the Secretary of the Air Force may buy a sample aircraft from an unsuccessful bidder in a competition held by his department and requiring the submission of sample aircraft. However, not more than one sample aircraft may be bought from each of the first, second, and third of those bidders in order of merit, at prices not more than 75, 60, and 50 percent, respectively, of the cost of developing and manufacturing the sample, as determined by the Secretary of the military department concerned.

#### **§ 2279. Aircraft: restrictions on alien employees of contractor**

Unless the Secretary of the military department concerned first consents in writing, an alien employed by a person who contracts under this chapter to furnish or construct aircraft, aircraft parts, or aeronautical accessories for the United States may not have access to the plans or specifications for the contracted items or to the work under construction, and may not participate in the trials under the contract.

### **CHAPTER 137.—PROCUREMENT GENERALLY**

Sec.

2301. Declaration of policy.

2302. Definitions.

2303. Applicability of chapter.

2304. Purchases and contracts: advertising; exceptions.

2305. Formal advertisements for bids; time; opening; award; rejection.

2306. Kinds of contracts.

2307. Advance payments.

2308. Assignment and delegation of procurement functions and responsibilities.

2309. Allocation of appropriations.

2310. Determinations and decisions.

2311. Delegation.

2312. Remission of liquidated damages.

2313. Examination of books and records of contractor.

2314. Laws inapplicable to agencies named in section 2303 of this title.

#### **§ 2301. Declaration of policy**

It is the policy of Congress that a fair proportion of the purchases and contracts made under this chapter be placed with small business concerns.

#### **§ 2302. Definitions**

In this chapter—

(1) "Head of an agency" means the Secretary, the Under Secretary, or any Assistant Secretary, of the Army, Navy, or Air

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Force; the Secretary of the Treasury; or the Executive Secretary of the National Advisory Committee for Aeronautics.

(2) "Negotiate" means make without formal advertising.

(3) "Formal advertising" means advertising as prescribed by section 2305 (a) and (b) of this title.

### § 2303. Applicability of chapter

(a) This chapter applies to the purchase, and contract to purchase, by any of the following agencies, for its use or otherwise, of all property named in subsection (b), and all services, for which payment is to be made from appropriated funds:

(1) The Department of the Army.

(2) The Department of the Navy.

(3) The Department of the Air Force.

(4) The Coast Guard.

(5) The National Advisory Committee for Aeronautics.

(b) This chapter does not cover land. It covers all other property including—

(1) public works;

(2) buildings;

(3) facilities;

(4) vessels;

(5) floating equipment;

(6) aircraft;

(7) parts;

(8) accessories;

(9) equipment; and

(10) machine tools.

(c) The provisions of this chapter that apply to the procurement of property apply also to contracts for its installation or alteration.

### § 2304. Purchases and contracts: formal advertising; exceptions

(a) Purchases of and contracts for property or services covered by this chapter shall be made by formal advertising. However, the head of an agency may negotiate such a purchase or contract, if—

(1) it is determined that such action is necessary in the public interest during a national emergency declared by Congress or the President;

(2) the public exigency will not permit the delay incident to advertising;

(3) the aggregate amount involved is not more than \$1,000;

(4) the purchase or contract is for personal or professional services;

(5) the purchase or contract is for any service by a university, college, or other educational institution;

(6) the purchase or contract is for property or services to be procured and used outside the United States, its Territories, and its possessions;

(7) the purchase or contract is for medicine or medical supplies;

(8) the purchase or contract is for property for authorized resale;

(9) the purchase or contract is for perishable subsistence supplies;

(10) the purchase or contract is for property or services for which it is impracticable to obtain competition;

(11) the purchase or contract is for property or services that he determines to be for experimental, developmental, or research work, or for making or furnishing property for experiment, test, development, or research;

(12) the purchase or contract is for property or services whose procurement he determines should not be publicly disclosed because of their character, ingredients, or components;

(13) the purchase or contract is for equipment that he determines to be technical equipment whose standardization and the interchangeability of whose parts are necessary in the public interest and whose procurement by negotiation is necessary to assure that standardization and interchangeability;

(14) the purchase or contract is for technical or special property that he determines to require a substantial initial investment or an extended period of preparation for manufacture, and for which he determines that formal advertising and competitive bidding might require duplication of investment or preparation already made or would unduly delay the procurement of that property; or

(15) the purchase or contract is for property or services for which he determines that the bid prices received after formal advertising are unreasonable as to all or part of the requirements, or were not independently reached in open competition, and for which (A) he has notified each responsible bidder of intention to negotiate and given him reasonable opportunity to negotiate; (B) the negotiated price is lower than the lowest rejected bid of any responsible bidder, as determined by the head of the agency; and (C) the negotiated price is the lowest negotiated price offered by any responsible supplier;

(16) he determines that (A) it is in the interest of national defense to have a plant, mine, or other facility, or a producer, manufacturer, or other supplier, available for furnishing property or services in case of a national emergency; or (B) the interest of industrial mobilization in case of such an emergency, or the interest of national defense in maintaining active engineering, research, and development, would otherwise be subserved; or

(17) negotiation of the purchase or contract is otherwise authorized by law.

(b) The data respecting the negotiation of each purchase or contract under clauses (1) and (7)-(17) of subsection (a) shall be kept by the contracting agency for six years after the date of final payment on the contract.

(c) This section does not authorize—

(1) the negotiation of a contract to construct or repair any building, road, sidewalk, sewer main, or similar item, unless—

(A) it is made under clauses (1)-(3), (10)-(12), or (15) of subsection (a); or

(B) it is to be performed outside the United States; or

(2) the erection, repair, or furnishing of any public building or public improvement.

(d) Whenever the head of the agency determines it to be practicable, such advance publicity as he considers suitable with regard

to the property involved and other relevant considerations shall be given for a period of at least 15 days before making a purchase or contract for property, or a service, under clause (7) or (8) of subsection (a) involving more than \$10,000.

(e) A report shall be made to Congress, on May 19 and November 19 of each year, of the purchases and contracts made under clauses (11) and (16) of subsection (a) during the period since the date of the last report. The report shall—

- (1) name each contractor;
- (2) state the amount of each contract; and
- (3) describe, with consideration of the national security, the property and services covered by each contract.

(f) For the purposes of the following laws, purchases or contracts negotiated under this section shall be treated as if they were made with formal advertising:

- (1) Sections 35–45 of title 41.
- (2) Sections 276a–276a–5 of title 40.
- (3) Sections 324 and 325a of title 40.

#### **§ 2305. Formal advertisements for bids; time; opening; award; rejection**

(a) Whenever formal advertising is required under section 2304 of this title, the advertisement shall be made a sufficient time before the purchase or contract. The specifications and invitations for bids shall permit such free and full competition as is consistent with the procurement of the property and services needed by the agency concerned.

(b) Bids shall be opened publicly at the time and place stated in the advertisement. Awards shall be made with reasonable promptness by giving written notice to the responsible bidder whose bid conforms to the invitation and will be the most advantageous to the United States, price and other factors considered. However, all bids may be rejected if the head of the agency determines that rejection is in the public interest.

(c) If the head of the agency considers that any bid received after formal advertising evidences a violation of the antitrust laws, he shall refer the bid to the Attorney General for appropriate action.

#### **§ 2306. Kinds of contracts**

(a) The cost-plus-a-percentage-of-cost system of contracting may not be used. Subject to this limitation and subject to subsections (b)–(e), the head of an agency may, in negotiating contracts under section 2304 of this title, make any kind of contract that he considers will promote the best interests of the United States.

(b) Each contract negotiated under section 2304 of this title shall contain a warranty, determined to be suitable by the head of the agency, that the contractor has employed or retained no person or selling agency to solicit or obtain the contract under an understanding or agreement for a commission, percentage, brokerage, or contingent fee, except a bona fide employee or established commercial or selling agency maintained by him to obtain business. If a contractor breaks such a warranty the United States may annul the contract without liability or may deduct the commission, percentage, brokerage, or contingent fee from the contract price or consideration.



(c) No cost contract, cost-plus-a-fixed-fee contract, or incentive contract may be made under section 2304 of this title, unless the head of the agency determines that such a contract is likely to be less costly to the United States than any other kind of contract or that it is impracticable to obtain property or services of the kind or quality required except under such a contract.

(d) The fee for performing a cost-plus-a-fixed-fee contract for experimental, developmental, or research work may not be more than 15 percent of the estimated cost of the contract, not including the fee. The fee for performing a cost-plus-a-fixed-fee contract for architectural or engineering services for a public work or utility plus the cost of those services to the contractor may not be more than 6 percent of the estimated cost of that work or project, not including fees. The fee for performing any other cost-plus-a-fixed-fee contract may not be more than 10 percent of the estimated cost of the contract, not including the fee. Determinations under this subsection of the estimated costs of a contract or project shall be made by the head of the agency at the time the contract is made.

(e) Each cost contract and each cost-plus-a-fixed-fee contract shall provide for notice to the agency by the contractor before the making, under the prime contract, of—

- (1) a cost-plus-a-fixed-fee subcontract; or
- (2) a fixed-price subcontract or purchase order involving more than \$25,000 or 5 percent of the estimated cost of the prime contract.

#### **§ 2307. Advance payments**

(a) Under terms agreed upon by the parties, the head of an agency may make advance payments in any amount on a negotiated contract, whether or not the contract previously provided for such payments, if—

- (1) the contractor gives adequate security; and
- (2) the head of the agency determines that advance payments are in the public interest or the interest of national defense and are necessary for the procurement of the property or services under the contract.

The total amount of advance payments on any contract may not be more than the contract price.

(b) The terms governing advance payments under subsection (a) may provide for a lien in favor of the United States on—

- (1) the property contracted for;
  - (2) the credit balance in any special account in which the advance payments are deposited; and
  - (3) such of the material and other property acquired for performance of the contract as may be agreed upon by the parties.
- Upon inclusion of such a provision, a lien is created that is paramount to any other lien.

#### **§ 2308. Assignment and delegation of procurement functions and responsibilities**

Subject to section 2311 of this title, to facilitate the procurement of property and services covered by this chapter by each agency named in section 2303 of this title for any other agency, and to facilitate joint procurement by those agencies—

(1) the head of an agency may, within his agency, delegate functions and assign responsibilities relating to procurement;

(2) the heads of two or more agencies may by agreement delegate procurement functions and assign procurement responsibilities from one agency to another of those agencies or to an officer or civilian employee of another of those agencies; and

(3) the heads of two or more agencies may create joint or combined offices to exercise procurement functions and responsibilities.

#### **§ 2309. Allocation of appropriations**

(a) Appropriations available for procurement by an agency named in section 2303 of this title may, through administrative allotment, be made available for obligation for procurement by any other agency in amounts authorized by the head of the allotting agency and without transfer of funds on the books of the Department of the Treasury.

(b) A disbursing officer of the allotting agency may make any disbursement chargeable to an allotment under subsection (a) upon a voucher certified by an officer or civilian employee of the procuring agency.

#### **§ 2310. Determinations and decisions**

(a) Determinations and decisions required to be made under this chapter by the head of an agency may be made for an individual purchase or contract or for a class of purchases or contracts. Such a determination or decision is final.

(b) Each determination or decision under clauses (11)-(16) of section 2304 (a), section 2306, or section 2307 (a) of this title shall be based on a written finding by the person making the determination or decision. Such a finding is final and shall be kept available in the agency for at least six years after the date of the determination or decision. A copy of the finding shall be submitted to the General Accounting Office with each contract to which it applies.

#### **§ 2311. Delegation**

The head of an agency may delegate, subject to his direction, to any other officer or official of that agency, any power under this chapter except the power to make determinations and decisions under clauses (11)-(16) of section 2304 (a), or section 2307 (a) of this title. However, the power to make a determination or decision under section 2304 (a) (11) of this title may be delegated only to a chief officer or official of that agency who is responsible for procurement, and only for contracts requiring the expenditure of not more than \$25,000.

#### **§ 2312. Remission of liquidated damages**

Upon the recommendation of the head of an agency, the Comptroller General may remit all or part, as he considers just and equitable, of any liquidated damages assessed for delay in performing a contract, made by that agency, that provides for such damages.

#### **§ 2313. Examination of books and records of contractor**

(a) An agency named in section 2303 of this title is entitled, through an authorized representative, to inspect the plant and audit the books and records of—

(1) a contractor performing a cost or cost-plus-a-fixed-fee contract made by that agency under this chapter; and

(2) a subcontractor performing any subcontract under a cost or cost-plus-a-fixed-fee contract made by that agency under this chapter.

(b) Each contract negotiated under this chapter shall provide that the Comptroller General and his representatives are entitled, until the expiration of three years after final payment, to examine any books, documents, papers, or records of the contractor, or any of his subcontractors, that directly pertain to, and involve transactions relating to, the contract or subcontract.

#### **§ 2314. Laws inapplicable to agencies named in section 2303 of this title**

Sections 5, 6, 6a, and 13 of title 41 do not apply to the procurement of property or services by the agencies named in section 2303 of this title.

### **CHAPTER 139.—RESEARCH AND DEVELOPMENT**

Sec.

2351. Policy, plans, and coordination.

2352. Contracts: limited to five-year terms.

2353. Contracts: acquisition, construction, or furnishing of test facilities and equipment.

2354. Contracts: indemnification provisions.

2355. Contracts: vouchering procedures.

2356. Contracts: delegations.

2357. Contracts: reports to Congress.

#### **§ 2351. Policy, plans, and coordination**

The Secretary of Defense shall keep informed on the status of scientific research relating to the national security, and shall make adequate provision for research and development on scientific problems relating to the national security. He shall—

(1) prepare a complete and integrated program of research and development for military purposes;

(2) keep informed on trends in scientific research relating to the national security and the measures necessary to assure continued and increasing progress;

(3) coordinate research and development among the military departments and allocate responsibility for specific programs among those departments;

(4) formulate policy for the Department of Defense on research and development involving agencies outside the Department of Defense; and

(5) consider the interaction of research and development and strategy and instruct the Joint Chiefs of Staff thereon.

#### **§ 2352. Contracts: limited to five-year terms**

Subject to availability of appropriations, contracts of a military department for services and the use of facilities for research or development, or both, may be for a term of not more than five years, and may be extended for not more than five additional years.

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**§ 2353. Contracts: acquisition, construction, or furnishing of test facilities and equipment**

(a) A contract of a military department for research or development, or both, may provide for the acquisition or construction by, or furnishing to, the contractor, of research, developmental, or test facilities and equipment that the Secretary of the military department concerned determines to be necessary for the performance of the contract. The facilities and equipment, and specialized housing for them, may be acquired or constructed at the expense of the United States, and may be lent or leased to the contractor with or without reimbursement, or may be sold to him at fair value. This subsection does not authorize new construction or improvements having general utility.

(b) Facilities that would not be readily removable or separable without unreasonable expense or unreasonable loss of value may not be installed or constructed under this section on property not owned by the United States, unless the contract contains—

(1) a provision for reimbursing the United States for the fair value of the facilities at the completion or termination of the contract or within a reasonable time thereafter;

(2) an option in the United States to acquire the underlying land; or

(3) an alternative provision that the Secretary concerned considers to be adequate to protect the interests of the United States in the facilities.

(c) Proceeds of sales or reimbursements under this section shall be paid into the Treasury as miscellaneous receipts, except to the extent otherwise authorized by law with respect to property acquired by the contractor.

**§ 2354. Contracts: indemnification provisions**

(a) With the approval of the Secretary of the military department concerned, any contract of a military department for research or development, or both, may provide that the United States will indemnify the contractor against either or both of the following, but only to the extent that they arise out of the direct performance of the contract and to the extent not compensated by insurance or otherwise:

(1) Claims (including reasonable expenses of litigation or settlement) by third persons, including employees of the contractor, for death, bodily injury, or loss of or damage to property, from a risk that the contract defines as unusually hazardous.

(2) Loss of or damage to property of the contractor from a risk that the contract defines as unusually hazardous.

(b) A contract, made under subsection (a), that provides for indemnification must also provide for—

(1) notice to the United States of any claim or suit against the contractor for the death, bodily injury, or loss of or damage to property; and

(2) control of or assistance in the defense by the United States, at its election, of that suit or claim.

(c) No payment may be made under subsection (a) unless the Secretary of the department concerned, or an officer or official of his department designated by him, certifies that the amount is just and reasonable.



(d) Upon approval by the Secretary concerned, payments under subsection (a) may be made from—

- (1) funds obligated for the performance of the contract concerned;
- (2) funds available for research or development, or both, and not otherwise obligated; or
- (3) funds appropriated for those payments.

#### **§ 2355. Contracts: vouchering procedures**

Notwithstanding any law relating to the expenditure of and accounting for public funds, the Secretary of each military department may, with the approval of the Secretary of Defense and the Comptroller General, prescribe by regulation the extent to which vouchers for funds spent under a contract of his department for research or development, or both, must be itemized, substantiated, or certified before payment.

#### **§ 2356. Contracts: delegations**

(a) The Secretary of a military department may delegate any authority under section 1584, 2353, 2354, or 2355 of this title to—

- (1) the Under Secretary of his department;
- (2) an Assistant Secretary of his department; or
- (3) the chief, and one assistant to the chief, of any technical service, bureau, or office.

However, the authority of the Secretary under section 2353 (b) (3) of this title may not be delegated to a person described in clause (3) of this subsection.

(b) Subject to other provisions of law, the power to negotiate and administer contracts for research or development, or both, may be further delegated. In this section "negotiate" means make without the formal advertising prescribed by section 2305 (a) and (b) of this title.

#### **§ 2357. Contracts: reports to Congress**

The Secretary of each military department shall report to Congress on contracts for research or development, or both, made during each six-month period ending on January 16 or July 16. The report shall—

- (1) list each of those contracts in which the cost to the United States will be more than \$50,000; and
- (2) contain specific information on each contract described in clause (1), but may omit any information if the Secretary considers that its disclosure would be detrimental to the national security.

### **CHAPTER 141.—MISCELLANEOUS PROCUREMENT PROVISIONS**

**Sec.**

2381. Contracts: regulations for bids.

2382. Aircraft: contract requirements.

2383. Emergency purchases: war material abroad.

2384. Supplies: marking with name of contractor.

2385. Arms and ammunition: immunity from taxation.

2386. Copyrights, patents, designs, etc.; acquisition.

**§ 2381. Contracts: regulations for bids**

- (a) The Secretary of a military department may—
- (1) prescribe regulations for the preparation, submission, and opening of bids for contracts with that department; and
  - (2) require that a bid be accompanied by a written guaranty, signed by one or more responsible persons, undertaking that the bidder, if his bid is accepted, will, within the time prescribed by the Secretary or other officer authorized to make the contract, make a contract and furnish a bond with good and sufficient sureties for the performance of the contract.
- (b) If a bidder, after being notified of the acceptance of his bid, fails within the time prescribed under subsection (a) (2) to enter into a contract and furnish the prescribed bond, the Secretary concerned or other authorized officer shall—
- (1) contract with another person; and
  - (2) charge against the defaulting bidder and his guarantors the difference between the amount specified by the bidder in his bid and the amount for which a contract is made with the other person, this difference being immediately recoverable by the United States for the use of the military department concerned in an action against the bidder and his guarantors, jointly or severally.
- (c) Proceedings under this section are subject to regulations under section 486 of title 40, unless exempted therefrom under section 481 (a) of that title.

**§ 2382. Aircraft: contract requirements**

- (a) The Secretary of a military department may not contract for the manufacture of all or part of any complete aircraft, unless the contractor agrees—
- (1) to report under oath to the Secretary, when the contract is completed, as prescribed in subsection (b) :
  - (2) to pay any excess profit into the Treasury;
  - (3) to make no division of any contract or subcontract for the same article for the purpose of evading this section;
  - (4) that the books and manufacturing spaces of its plant, affiliates, and divisions may at any time be audited and inspected, respectively, by any person designated by the Secretary of the military department concerned, the Secretary of the Treasury, or an authorized committee of Congress; and
  - (5) to make no subcontract unless the subcontractor agrees to the conditions set forth in this subsection.
- (b) The report required under subsection (a) (1) shall be in the form prescribed by the Secretary of the military department concerned. It shall state the total contract price, the cost of performing the contract, the net profit or loss, and the percentage of the contract price that is net profit or loss. A copy shall be sent to the Secretary of the Treasury to be considered with the Federal income tax returns of the contractor.
- (c) For the purposes of this section, "excess profit" means so much of the profits as the Secretary of the Treasury determines to

be greater than 12 percent of the total contract price for contracts covered by this section and completed by a contractor or subcontractor within the taxable year. The method of computing excess profits shall be determined by the Secretary of the Treasury in agreement with the Secretary of the military department concerned. It shall be made available to the public.

(d) When an excess profit is found owing, the Secretary of the Treasury shall allow credit for any Federal income taxes paid or to be paid on the excess profit. If a contractor or subcontractor has a net loss, or a net profit of less than 12 percent, on the aggregate of contracts or subcontracts covered by this section and completed in a taxable year, the deficiency shall be allowed as a credit against any excess profit for the next succeeding four taxable years.

(e) When paid into the Treasury, an excess profit becomes the property of the United States. The surety under the contract is not liable for its payment.

(f) This section applies to any division of a contract or subcontract covered by this section.

(g) This section does not apply to—

(1) a contract or subcontract for scientific equipment for communications, target detection, navigation, or fire control if the Secretary of the military department concerned designates the contract or subcontract for exemption; or

(2) a contract or subcontract, or division thereof, if the amount involved is \$10,000 or less.

#### **§ 2383. Emergency purchases: war material abroad**

The Secretary of a military department may make emergency purchases of war material abroad. Material so purchased shall be admitted free of duty.

#### **§ 2384. Supplies: marking with name of contractor**

Each contractor furnishing supplies to a military department shall mark them with his name in the manner directed by the Secretary of that department. No supplies may be received unless so marked.

#### **§ 2385. Arms and ammunition: immunity from taxation**

No tax on the sale or transfer of firearms, pistols, revolvers, shells, or cartridges may be imposed on such articles when bought with funds appropriated for a military department.

#### **§ 2386. Copyrights, patents, designs, etc.; acquisition**

Funds appropriated for a military department available for making or procuring supplies may be used to acquire any of the following if the acquisition relates to supplies or processes produced or used by or for, or useful to, that department:

(1) Copyrights, patents, and applications for patents.

(2) Licenses under copyrights, patents, and applications for patents.

(3) Designs, processes, and manufacturing data.

(4) Releases, before suit is brought, for past infringement of patents.

**CHAPTER 143.—PRODUCTION BY MILITARY AGENCIES**

Sec.

2421. Plantations and farms: operation, maintenance, and improvement.

**§ 2421. Plantations and farms: operation, maintenance, and improvement**

(a) Appropriations for the subsistence of members of the Army, Navy, Air Force, or Marine Corps are available for expenditures necessary in the operation, maintenance, and improvement of any plantation or farm, outside the United States and under the jurisdiction of the Army, Navy, Air Force, or Marine Corps, as the case may be, for furnishing fresh fruits and vegetables to the armed forces. However, no land may be acquired under this subsection.

(b) Fruits and vegetables produced under subsection (a) that are over the amount furnished or sold to the armed forces or to civilians serving with the armed forces may be sold only outside the United States.

(c) Of the persons employed by the United States under subsection (a), only nationals of the United States are entitled to the benefits provided by laws relating to the employment, work, compensation, or other benefits of civilian employees of the United States.

(d) A plantation or farm covered by subsection (a) shall be operated, maintained, and improved by a private contractor or lessee, so far as practicable. Before using members of the Army, Navy, Air Force, or Marine Corps, as the case may be, the Secretary concerned must make a reasonable effort to make a contract or lease with a person in civil life for his services for that operation, maintenance, or improvement, on terms advantageous to the United States. A determination by the Secretary as to the reasonableness of effort to make a contract or lease, and as to the advantageous nature of its terms, is final.

**CHAPTER 145.—CATALOGING AND STANDARDIZATION**

Sec.

2451. Defense supply management.

2452. Duties of Secretary of Defense.

2453. Supply catalog: distribution and use.

2454. Supply catalog: new or obsolete items.

2455. Reports to Congress.

2456. Coordination with General Services Administration.

**§ 2451. Defense supply management**

(a) The Secretary of Defense shall develop a single catalog system and related program of standardizing supplies for the Department of Defense.

(b) In cataloging, the Secretary shall name, describe, classify, and number each item recurrently used, bought, stocked, or distributed by the Department of Defense, so that only one distinctive combination of letters or numerals, or both, identifies the same item throughout the Department of Defense. Only one identification may be used for each item for all supply functions from purchase to final disposal in the field or other area. The catalog may consist of a number of volumes, sections, or supplements. It shall include all items of supply and, for each item, information needed for supply operations, such as descriptive and performance data, size, weight, cubage, packaging



and packing data, a standard quantitative unit of measurement, and other related data that the Secretary determines to be desirable.

(c) In standardizing supplies the Secretary shall, to the highest degree practicable—

(1) standardize items used throughout the Department of Defense by developing and using single specifications, eliminating overlapping and duplicate specifications, and reducing the number of sizes and kinds of items that are generally similar;

(2) standardize the methods of packing, packaging, and preserving standardized items; and

(3) make efficient use of the services and facilities for inspecting, testing, and accepting those items.

#### **§ 2452. Duties of Secretary of Defense**

The Secretary of Defense shall—

(1) develop and maintain the supply catalog, and the standardization program, described in section 2451 of this title;

(2) direct and coordinate progressive use of the supply catalog in all supply functions within the Department of Defense from the determination of requirements through final disposal;

(3) direct, review, and approve—

(A) the naming, description, and pattern of description of all items;

(B) the screening, consolidation, classification, and numbering of descriptions of all items; and

(C) the publication and distribution of the supply catalog;

(4) maintain liaison with industry advisory groups to coordinate the development of the supply catalog and the standardization program with the best practices of industry and to obtain the fullest practicable cooperation and participation of industry in developing the supply catalog and the standardization program;

(5) establish, publish, review, and revise, within the Department of Defense, military specifications, standards, and lists of qualified products, and resolve differences between the military departments, bureaus, and services with respect to them;

(6) assign responsibility for parts of the cataloging and the standardization programs to the military departments, bureaus, and services within the Department of Defense, when practical and consistent with their capacity and interest in those supplies;

(7) establish time schedules for assignments made under clause (6); and

(8) make final decisions in all matters concerned with the cataloging and standardization programs.

#### **§ 2453. Supply catalog: distribution and use**

The Secretary of Defense shall distribute the parts of the supply catalog described in section 2451 of this title as they are completed. Existing catalogs shall be replaced according to schedules established by the Secretary. After replacement no other supply catalog may be used within the Department of Defense with respect to the kinds of items covered by that part. All property reports and records shall use the nomenclature, item numbers, and descriptive data of the supply catalog.

#### **§ 2454. Supply catalog: new or obsolete items**

(a) After any part of the supply catalog described in section 2451 of this title is distributed, and with respect to the kinds of items covered by that part, only the items listed in it may be procured for recurrent use in the Department of Defense. However, a military department may acquire any new item that is necessary to carry out its mission. As soon as such an item is acquired, it shall be submitted to the Secretary for inclusion in the catalog and the standardization program.

(b) Obsolete items may be deleted from the catalog at any time.

#### **§ 2455. Reports to Congress**

(a) The Secretary of Defense shall send to the Committees on Armed Services of the Senate and the House of Representatives, on January 31 and July 31 of each year, a progress report on cataloging under this chapter from each military department. Each report shall cover the six-month period ending with the preceding June 30 or December 31, whichever was later. The report shall contain—

(1) the number of sections or parts of the supply catalog that have been published, and their titles;

(2) the number of item identification numbers in the catalog that have replaced, for all supply purposes, former item identifications or stock or catalog numbers;

(3) the reduction in the number of separate item identifications; and

(4) any other information that the Secretary considers will best inform Congress of the status of the cataloging program.

(b) The Secretary shall report to the Committees on Armed Services of the Senate and the House of Representatives, on January 31 and July 31 of each year, on the progress of the standardization program within the military departments. Each report shall cover the six-month period ending with the preceding June 30 or December 31, whichever was later. The report shall contain—

(1) the number of separate specifications that have been consolidated into single specifications for use throughout the Department of Defense;

(2) the reduction in the number of sizes or kinds of items that are generally similar;

(3) the duplications eliminated in services, space, and facilities; and

(4) any other information that the Secretary considers will best inform Congress of the progress of the standardization program.

(c) The Secretary may combine the reports required by subsections (a) and (b).

#### **§ 2456. Coordination with General Services Administration**

To avoid unnecessary duplication, the Administrator of General Services and the Secretary of Defense shall coordinate the cataloging and standardization activities of the General Services Administration and the Department of Defense.

## CHAPTER 147.—UTILITIES AND SERVICES

Sec.

2481. Utilities and services: sale; expansion and extension of systems and facilities.

2482. Commissary stores: private operation.

### § 2481. Utilities and services: sale; expansion and extension of systems and facilities

(a) Under such regulations and for such periods and at such prices as he may prescribe, the Secretary of a military department or his designee may sell or contract to sell to purchasers within or in the immediate vicinity of an activity of the Army, Navy, Air Force, or Marine Corps, as the case may be, any of the following utilities and related services, if it is determined that they are not available from another local source and that the sale is in the interest of national defense or in the public interest:

- (1) Electric power.
- (2) Steam.
- (3) Compressed air.
- (4) Water.
- (5) Sewage and garbage disposal.
- (6) Natural, manufactured, or mixed gas.
- (7) Ice.
- (8) Mechanical refrigeration.
- (9) Telephone service.

(b) Proceeds of sales under subsection (a) shall be credited to the appropriation currently available for the supply of that utility or service.

(c) To meet local needs the Secretary of the military department concerned may make minor expansions and extensions of any distributing system or facility within an activity through which a utility or service is furnished under subsection (a).

### § 2482. Commissary stores: private operation

Private persons may operate commissary stores under such regulations as the Secretary of Defense may approve.

## CHAPTER 149.—ISSUE TO ARMED FORCES

Sec.

2511. Reserve components: supplies, services, and facilities.

### § 2511. Reserve components: supplies, services, and facilities

(a) The Secretary concerned shall make available to the reserve components under his jurisdiction the supplies, services, and facilities of the armed forces under his jurisdiction that he considers necessary to support and develop those components.

(b) Whenever he finds it to be in the best interest of the United States, the Secretary concerned or his representative may issue supplies of the armed forces under his jurisdiction to the reserve components under his jurisdiction, without charge to the appropriations for those components for the cost or value of the supplies or for any related expense.

(c) Whenever he finds it to be in the best interest of the United States, the Secretary of the Army or the Secretary of the Air Force,

or his representative, may issue to the Army National Guard or the Air National Guard, as the case may be, supplies of the armed forces under his jurisdiction that are in addition to supplies issued to that National Guard under section 702 of title 32 or charged against its appropriations under section 106 or 107 of title 32, without charge to the appropriations for those components for the cost or value of the supplies or for any related expense.

(d) Supplies issued under subsection (b) or (c) may be repossessed or redistributed as prescribed by the Secretary concerned.

## **CHAPTER 151.—ISSUE OF SERVICEABLE MATERIAL OTHER THAN TO ARMED FORCES**

**Sec.**

**2541.** Equipment and barracks: national veterans' organizations.

**2542.** Equipment for instruction and practice: American National Red Cross.

### **§ 2541. Equipment and barracks: national veterans' organizations**

(a) The Secretary of a military department, under conditions prescribed by him, may lend cots, blankets, pillows, mattresses, bed sacks, and other supplies under the jurisdiction of that department to any recognized national veterans' organization for use at its national or state convention or national youth athletic or recreation tournament. He may, under conditions prescribed by him, also permit the organization to use unoccupied barracks under the jurisdiction of that department for such an occasion.

(b) Property lent under subsection (a) may be delivered on terms and at times agreed upon by the Secretary of the military department concerned and representatives of the veterans' organization. However, the veterans' organization must defray any expense incurred by the United States in the delivery, return, rehabilitation, or replacement of that property, as determined by the Secretary.

(c) The Secretary of the military department concerned shall require a good and sufficient bond for the return in good condition of property lent or used under subsection (a).

### **§ 2542. Equipment for instruction and practice: American National Red Cross**

The Secretary of a military department, under regulations to be prescribed by him, may lend equipment under the jurisdiction of that department that is on hand, and that can be temporarily spared, to any organization formed by the American National Red Cross that needs it for instruction and practice for the purpose of aiding the Army, Navy, or Air Force in time of war. The Secretary shall by regulation require the immediate return, upon request, of equipment lent under this section. The Secretary shall require a bond, in double the value of the property issued under this section, for the care and safekeeping of that property and for its return when required.



## CHAPTER 153.—EXCHANGE OF MATERIAL AND DISPOSAL OF OBSOLETE, SURPLUS, OR UNCLAIMED PROPERTY

Sec.

2571. Interchange of supplies and services.

2572. Condemned or obsolete material: loan or gift to certain organizations.

2573. Excess property: transfers to Canal Zone Government.

2574. Armament: sale of individual pieces.

2575. Disposition of unclaimed property.

### § 2571. Interchange of supplies and services

(a) If its head approves, a department or organization within the Department of Defense may, upon request, perform work and services for, or furnish supplies to, any other of those departments or organizations, without reimbursement or transfer of funds.

(b) If military or civilian personnel of a department or organization within the Department of Defense are assigned or detailed to another of those departments or organizations, and if the head of the department or organization to which they are transferred approves, their pay and allowances and the cost of transporting their dependents and household goods may be charged to an appropriation that is otherwise available for those purposes to that department or organization.

### § 2572. Condemned or obsolete material: loan or gift to certain organizations

Subject to regulations under section 486 of title 40, the Secretary of a military department, or the Secretary of the Treasury, under regulations to be prescribed by him, may lend or give, without expense to the United States, books, manuscripts, works of art, drawings, plans, models, and condemned or obsolete combat material that are not needed by that department to—

- (1) a municipal corporation;
- (2) a soldiers' monument association;
- (3) a State museum;
- (4) an incorporated museum, operated and maintained for educational purposes only, whose charter denies it the right to operate for profit;
- (5) a post of the Veterans of Foreign Wars of the United States;
- (6) a post of the American Legion;
- (7) a local unit of any other recognized war veterans' association; or
- (8) a post of the Sons of Veterans Reserve.

### § 2573. Excess property: transfers to Canal Zone Government

A military department may transfer to the Canal Zone Government, without reimbursement and regardless of location, any supplies, including tools, structures, vessels, and floating equipment, that are excess property as defined by section 472 (e) of title 40 and have been certified by the Governor of the Canal Zone as necessary for the care, maintenance, operation, improvement, sanitation, or government of the Canal Zone.

#### **§ 2574. Armament: sale of individual pieces**

A piece of armament that can be advantageously replaced, and that is not needed for its historical value, may be sold by the military department having jurisdiction over it for not less than cost, if the Secretary concerned considers that there are adequate sentimental reasons for the sale.

#### **§ 2575. Disposition of unclaimed property**

(a) The Secretary of any military department, and the Secretary of the Treasury, under such regulations as they may respectively prescribe, may each by public or private sale or otherwise, dispose of all lost, abandoned, or unclaimed personal property that comes into the custody or control of his department, other than property subject to section 4712, 4713, 6522, 9712, or 9713 of this title or subject to subsection (c) of this section. However, property may not be disposed of until diligent effort has been made to find the owner, his heirs or next of kin, or his legal representative, nor until one year after the date when the property is received at a storage point designated by the Secretary. If the owner, his heirs or next of kin, or his legal representative is determined but not found, the property may not be disposed of until the expiration of 120 days after the date when notice, giving the time and place of the intended sale or other disposition, has been sent by registered mail to that person at his last known address.

(b) The net proceeds from the sale of property under this section shall be covered into the Treasury as miscellaneous receipts. The owner, his heirs or next of kin, or his legal representative may file a claim for those proceeds with the General Accounting Office within five years after the date of the disposal of the property. If not filed within that period, such a claim may not be considered by a court or the General Accounting Office.

(c) No property covered by this section may be delivered to the Soldiers' Home by the Secretary of the Army or the Secretary of the Air Force, except papers of value, sabers, insignia, decorations, medals, watches, trinkets, manuscripts, and other articles valuable chiefly as keepsakes. The Home shall deliver the property to the owner, his heirs or next of kin, or his legal representative, if he establishes a right to it within two years after its receipt by the Home.

### **CHAPTER 155.—ACCEPTANCE OF GIFTS AND SERVICES**

#### **Sec.**

2601. General gift funds.

2602. American National Red Cross: cooperation and assistance.

#### **§ 2601. General gift funds**

(a) The Secretary concerned may accept, hold, administer, and spend any gift, devise, or bequest of real or personal property, made on the condition that it be used for the benefit, or in connection with the establishment, operation, or maintenance, of a school, hospital, library, museum, cemetery, or other institution or organization under the jurisdiction of his department. He may pay all necessary ex-

penses in connection with the conveyance or transfer of a gift, devise, or bequest made under this subsection.

(b) Gifts and bequests of money, and the proceeds of the sale of property, received under subsection (a) shall be deposited in the Treasury in the fund called—

(1) "Department of the Army General Gift Fund", in the case of deposits of that department;

(2) "Department of the Navy General Gift Fund", in the case of deposits of that department;

(3) "Department of the Air Force General Gift Fund", in the case of deposits of that department; and

(4) "Coast Guard General Gift Fund", in the case of deposits of the Secretary of the Treasury.

The Secretary concerned may disburse funds deposited under this subsection for the benefit or use of the designated institution or organization, subject to the terms of the gift, devise, or bequest.

(c) For the purposes of Federal income, estate, and gift taxes, property that is accepted under subsection (a) shall be considered as a gift, devise, or bequest to or for the use of the United States.

(d) The Secretary of the Treasury, upon the request of the Secretary of a military department, may retain money, securities, and the proceeds of the sale of securities, in the gift fund of the department concerned, and may invest money and reinvest the proceeds of the sale of securities in that fund in securities of the United States or in securities guaranteed as to principal and interest by the United States. The Secretary of the Treasury may do likewise with respect to the Coast Guard General Gift Fund. The interest and profits accruing from those securities shall be deposited to the credit of the gift fund of the department concerned and may be disbursed as provided in subsection (b).

#### **§ 2602. American National Red Cross: cooperation and assistance**

(a) Whenever the President finds it necessary, he may accept the cooperation and assistance of the American National Red Cross, and employ it under the armed forces under regulations to be prescribed by the Secretary of Defense.

(b) Personnel of the American National Red Cross who are performing duties in connection with its cooperation and assistance under subsection (a) may be furnished—

(1) transportation, at the expense of the United States, while traveling to and from, and while performing, those duties, in the same manner as civilian employees of the armed forces;

(2) meals and quarters, at their expense or at the expense of the American National Red Cross, except that where civilian employees of the armed forces are quartered without charge, employees of the American National Red Cross may also be quartered without charge; and

(3) available office space, warehousing, wharfage, and means of communication, without charge.

(c) No fee may be charged for a passport issued to an employee of the American National Red Cross for travel outside the United States to assume or perform duties under this section.

(d) Supplies of the American National Red Cross, including gifts for the use of the armed forces, may be transported at the expense of the United States, if it is determined under regulations prescribed under subsection (a) that they are necessary to the cooperation and assistance accepted under this section.

(e) For the purposes of this section, employees of the American National Red Cross may not be considered as employees of the United States.

## CHAPTER 157.—TRANSPORTATION

Sec.

2631. Supplies: preference to United States vessels.

2632. Transportation to and from certain places of employment.

### § 2631. Supplies: preference to United States vessels

Only vessels of the United States or belonging to the United States may be used in the transportation by sea of supplies bought for the Army, Navy, Air Force, or Marine Corps. However, if the President finds that the freight charged by those vessels is excessive or otherwise unreasonable, contracts for transportation may be made as otherwise provided by law. Charges made for the transportation of those supplies by those vessels may not be higher than the charges made for transporting like goods for private persons.

### § 2632. Transportation to and from certain places of employment

(a) Whenever the Secretary of a military department determines that it is necessary for the effective conduct of the affairs of that department, he may, at reasonable rates of fare fixed under regulations to be prescribed by him, provide assured and adequate transportation by motor vehicle or water carrier to and from their places of employment for persons attached to, or employed in, that department, and during a war or during a national emergency declared by Congress or the President, for persons attached to, or employed in, a private plant that is manufacturing material for that department.

(b) Transportation may not be provided under subsection (a) unless the Secretary of the military department concerned, or an officer of the department concerned designated by the Secretary, determines that—

(1) other facilities are inadequate and cannot be made adequate;

(2) a reasonable effort has been made to induce operators of private facilities to provide the necessary transportation; and

(3) the service to be furnished will make proper use of transportation facilities and will supply the most efficient transportation to the persons concerned.

(c) To provide transportation under subsection (a), the department may—

(1) buy, lease, or charter motor vehicles or water carriers having a seating capacity of 12 or more passengers;

(2) maintain and operate that equipment by—

(A) enlisted members of the Army, Navy, Air Force or Marine Corps, as the case may be;

(B) employees of the department concerned; and

(C) private persons under contract; and



(3) lease or charter the equipment to private or public carriers for operation under terms that are considered necessary by the Secretary or by an officer of the department designated by the Secretary, and that may provide for the pooling of Government-owned and privately owned equipment and facilities and for the reciprocal use of that equipment.

(d) Fares received under subsection (a), and proceeds of the leasing or chartering of equipment under subsection (c) (3), shall be covered into the Treasury as miscellaneous receipts.

## **CHAPTER 159.—REAL PROPERTY; RELATED PERSONAL PROPERTY; AND LEASE OF NON-EXCESS PROPERTY**

**Sec.**

- 2661. Planning and construction of public works projects by military departments.
- 2662. Real property transactions: agreement with Armed Services Committees; reports.
- 2663. Acquisition.
- 2664. Acquisition of property for lumber production.
- 2665. Sale of certain interests in land; logs.
- 2666. Acquisition: land purchase contracts; limitation on commission.
- 2667. Leases: non-excess property.
- 2668. Easements for rights-of-way.
- 2669. Easements for rights-of-way: gas, water, sewer pipe lines.
- 2670. Licenses: military installations; erection and use of buildings; American National Red Cross.

### **§ 2661. Planning and construction of public works projects by military departments**

The Secretary of Defense shall maintain direct surveillance over the planning and construction of public works projects by the military departments. The Secretary shall keep currently and fully informed of the status, progress, and cost of, and other pertinent matters concerning, those projects.

### **§ 2662. Real property transactions: agreement with Armed Services Committees; reports**

(a) The Secretary of a military department, or his designee, must come to an agreement with the Committees on Armed Services of the Senate and the House of Representatives before entering into any of the following transactions by or for the use of that department:

- (1) An acquisition of fee title to any real property, if the estimated price is more than \$25,000.
- (2) A lease of any real property to the United States, if the estimated annual rental is more than \$25,000.
- (3) A lease of real property owned by the United States, if the estimated annual rental is more than \$25,000.
- (4) A transfer of real property owned by the United States to another Federal agency or another military department or to a State, if the estimated value is more than \$25,000.
- (5) A report of excess real property owned by the United States to a disposal agency, if the estimated value is more than \$25,000.

If a transaction covered by clause (1) or (2) is part of a project, the agreement must be based on the general plan for that project, in-

cluding an estimate of the total cost of the lands to be acquired or leases to be made.

(b) The Secretary of each military department shall report quarterly to the Committees on Armed Services of the Senate and the House of Representatives on transactions described in subsection (a) that involve an estimated value of more than \$5,000 but not more than \$25,000.

(c) This section applies only to real property in the United States, Alaska, Hawaii, and Puerto Rico. It does not apply to real property for river and harbor projects or flood-control projects, or to leases of Government-owned real property for agricultural or grazing purposes.

(d) A statement in an instrument of conveyance, including a lease, that the requirements of this section have been met, or that the conveyance is not subject to this section, is conclusive.

### **§ 2663. Acquisition**

(a) The Secretary of a military department may have proceedings brought in the name of the United States, in a court of proper jurisdiction, to acquire by condemnation any interest in land, including temporary use, needed for—

(1) the site, construction, or operation of fortifications, coast defenses, or military training camps;

(2) the construction and operation of plants for the production of nitrate and other compounds, and the manufacture of explosives or other munitions of war; or

(3) the development and transmission of power for the operation of plants under clause (2).

Proceedings under this subsection shall be in accordance with the law of the State in which the suit is brought.

(b) In time of war or when war is imminent, the United States may, immediately upon the filing of a petition for condemnation under subsection (a), take and use the land to the extent of the interest sought to be acquired.

(c) The Secretary of the military department concerned may contract for or buy any interest in land, including temporary use, needed for any purpose named in subsection (a), as soon as the owner fixes a price for it and the Secretary considers that price to be reasonable.

(d) The Secretary of the military department concerned may accept for the United States a gift of any interest in land, including temporary use, for any purpose named in subsection (a).

### **§ 2664. Acquisition of property for lumber production**

(a) The Secretary of a military department, the Secretary of Commerce, and the Chairman of the Federal Maritime Board, or any one or more of them, may have proceedings brought in the name of the United States to acquire by condemnation any interest in property named in subsection (b) and needed for—

(1) the production of aircraft, vessels, dry docks, or equipment for them;

(2) the procurement of supplies for aircraft, vessels, and dry docks; or

(3) housing for persons employed by the United States in connection with functions of the Army, Navy, Air Force, or Marine Corps, or the functions transferred to the Secretary of Commerce

or the Federal Maritime Board by 1950 Reorganization Plan No. 21, effective May 24, 1950 (64 Stat. 1273), as the case may be. Proceedings under this subsection shall be in accordance with the laws of the State in which the suit is brought.

(b) The kinds of property that may be acquired by condemnation under subsection (a) are—

- (1) standing or fallen timber;
- (2) sawmills;
- (3) camps;
- (4) machinery;
- (5) logging roads;
- (6) rights-of-way;
- (7) supplies; and
- (8) works, property, or appliances suitable for the production of lumber and timber products.

(c) Jurisdiction over condemnation proceedings under this section is vested in the United States District Court for the district in which the property, or any part of it, sought to be condemned is located, regardless of its value.

(d) In time of war or when war is imminent, the United States may, immediately upon the filing of a petition for condemnation under subsection (a), take and use the property to the extent of the interest sought to be acquired.

(e) A person named in subsection (a) may contract for or buy any interest in property needed for any purpose named in subsection (a), as soon as the owner fixes a price for it and that person considers that price to be reasonable.

(f) A person named in subsection (a) may accept for the United States a gift of any property named in subsection (b) for any purpose named in subsection (a).

#### **§ 2665. Sale of certain interests in land; logs**

(a) The President, through an executive department or the Federal Maritime Board, may sell to any person or foreign government any interest in land that is acquired under section 2664 of this title for the production of lumber or timber products, except land under the control of the Department of the Army or the Department of the Air Force.

(b) The President, through an executive department or the Federal Maritime Board, may sell to any person or foreign government any logs wholly or partly manufactured by, or otherwise procured for, the Army, Navy, Air Force, or Federal Maritime Board.

(c) Sales under subsection (a) or (b) shall be at prices determined by the President acting through the selling agency.

(d) Proceeds of sales under subsection (a) or (b) shall be credited to the appropriations under which the property was procured.

#### **§ 2666. Acquisition: land purchase contracts; limitation on commission**

The maximum amount payable as commission on a contract for the purchase of land from funds appropriated for the Department of Defense is 2 percent of the purchase price.

**§ 2667. Leases: non-excess property**

(a) Whenever the Secretary of a military department considers it advantageous to the United States, he may lease to such lessee and upon such terms as he considers will promote the national defense or be in the public interest, real or personal property that is—

- (1) under the control of that department;
- (2) not for the time needed for public use; and
- (3) not excess property, as defined by section 472 of title 40.

(b) A lease under subsection (a)—

- (1) may not be for more than five years, unless the Secretary concerned determines that a lease for a longer period will promote the national defense or be in the public interest;
- (2) may give the lessee the first right to buy the property if the lease is revoked to allow the United States to sell the property under any other provision of law;
- (3) must permit the Secretary to revoke the lease at any time, unless he determines that the omission of such a provision will promote the national defense or be in the public interest;
- (4) must be revocable by the Secretary during a national emergency declared by the President; and
- (5) may provide, notwithstanding section 303b of title 40 or any other provision of law, for the maintenance, protection, repair, or restoration, by the lessee, of the property leased, or of the entire unit or installation where a substantial part of it is leased, as part or all of the consideration for the lease.

(c) This section does not apply to oil, mineral, or phosphate lands.

(d) Money rentals received by the United States directly from a lease under this section shall be covered into the Treasury as miscellaneous receipts. Payments for utilities or services furnished to the lessee under such a lease by the department concerned may be covered into the Treasury to the credit of the appropriation from which the cost of furnishing them was paid.

(e) The interest of a lessee of property leased under this section may be taxed by State or local governments. A lease under this section shall provide that, if and to the extent that the leased property is later made taxable by State or local governments under an act of Congress, the lease shall be renegotiated.

**§ 2668. Easements for rights-of-way**

(a) If the Secretary of a military department finds that it will not be against the public interest, he may grant, upon such terms as he considers advisable, easements for rights-of-way over, in, and upon public lands permanently withdrawn or reserved for the use of that department, and other lands under his control, to a State, Territory, Commonwealth, or possession, or political subdivision thereof, or to a citizen, association, partnership, or corporation of a State, Territory, Commonwealth, or possession, for—

- (1) railroad tracks;
- (2) oil pipe lines;
- (3) substations for electric power transmission lines, telephone lines, and telegraph lines, and pumping stations for gas, water, sewer, and oil pipe lines;



- (4) canals;
- (5) ditches;
- (6) flumes;
- (7) tunnels;
- (8) dams and reservoirs in connection with fish and wildlife programs, fish hatcheries, and other improvements relating to fish-culture;
- (9) roads and streets; and
- (10) any other purpose that he considers advisable, except a purpose covered by section 2669 of this title or by section 961 of title 43.

(b) No easement granted under this section may include more land than is necessary for the easement.

(c) The Secretary of the military department concerned may terminate all or part of any easement granted under this section for—

- (1) failure to comply with the terms of the grant;
- (2) nonuse for a two-year period; or
- (3) abandonment.

(d) Copies of instruments granting easements over public lands under this section shall be furnished to the Secretary of the Interior.

#### **§ 2669. Easements for rights-of-way: gas, water, sewer pipe lines**

(a) If the Secretary of a military department finds that it will be in the public interest and will not substantially injure the interest of the United States in the property affected, he may grant, upon such terms as he considers advisable, easements for rights-of-way over, in, and upon public lands permanently withdrawn or reserved for the use of that department, and other lands under his control, for gas, water, and sewer pipe lines, to a State, Territory, Commonwealth, or possession, or political subdivision thereof, or to a citizen, association, partnership, or corporation of a State, Territory, Commonwealth, or possession.

(b) No easement granted under this section may include more land than is necessary for the easement.

(c) The Secretary of the military department concerned may terminate all or part of any easement granted under this section for—

- (1) failure to comply with the terms of the grant;
- (2) nonuse; or
- (3) abandonment.

(d) The Secretary concerned shall include in his annual report to the President a complete statement of each easement granted under this section, including the name and address of the grantee, the purpose of the grant, and the benefits accruing to the United States or to the public.

#### **§ 2670. Licenses: military installations; erection and use of buildings; American National Red Cross**

Under such conditions as he may prescribe, the Secretary of any military department may issue a revocable license to the American National Red Cross to—

- (1) erect and maintain, on any military installation under his jurisdiction, buildings for the storage of supplies; or
- (2) use, for the storage of supplies, buildings erected by the United States.

Supplies stored in buildings erected or used under this section are available to aid the civilian population in a serious national disaster.

## CHAPTER 161.—PROPERTY RECORDS

Sec.

2701. Basis: reports.

### § 2701. Basis: reports

(a) Under regulations prescribed by him, the Secretary of Defense shall have the records of the fixed property, installations, major equipment items, and stored supplies of the military departments maintained on both a quantitative and a monetary basis, so far as practicable.

(b) The Secretary shall report once a year to Congress and the President on property records maintained under this section.

## CHAPTER 163.—MILITARY CLAIMS

Sec.

2731. Definition.

2732. Property loss: incident to service; members of Army, Navy, Air Force, or Marine Corps and civilian employees.

2733. Property loss; personal injury or death: incident to noncombat activities of Department of Army, Navy, or Air Force.

2734. Property loss; personal injury or death: incident to noncombat activities of Department of Army, Navy, or Air Force; foreign countries.

2735. Settlement: final and conclusive.

### § 2731. Definition

In this chapter, "settle" means consider, ascertain, adjust, determine, and dispose of a claim, whether by full or partial allowance or by disallowance.

### § 2732. Property loss: incident to service; members of Army, Navy, Air Force, or Marine Corps and civilian employees

(a) Under such regulations as the Secretary of a military department may prescribe, he or any officer designated by him may settle and pay a claim against the United States for not more than \$2,500 by a civilian employee of that department, or a member of the Army, Navy, Air Force, or Marine Corps, as the case may be, for damage to, or loss of, personal property incident to his service. If the claim is substantiated and the possession of that property is determined to be reasonable, useful, or proper under the circumstances, the claim may be paid or the property replaced in kind.

(b) Under such regulations as the Secretary of Defense may prescribe, he or any officer designated by him has the same authority as the Secretary of a military department with respect to a claim by a civilian employee of the Department of Defense not covered by subsection (a) for damage to, or loss of, personal property incident to his service.

(c) If a person named in subsection (a) or (b) is dead, the Secretary of the military department concerned or the Secretary of Defense, as the case may be, or any official designated by him, may settle and pay any claim made by the decedent's surviving (1) spouse, (2) children, (3) father or mother, or both, or (4) brothers or sisters, or both, that arose before or after the decedent's death and is otherwise

covered by subsection (a) or (b). Claims of survivors shall be settled and paid in the order named.

(d) A claim may be allowed under subsection (a) or (b) for damage to, or loss of, property only if—

(1) it is presented in writing within two years after it accrues, except that if the claim accrues in time of war or in time of armed conflict in which any armed force is engaged or if such a war or armed conflict intervenes within two years after it accrues, and if good cause is shown, the claim may be presented not later than two years after that cause ceases to exist, or two years after the war or armed conflict is terminated, whichever is earlier;

(2) it did not occur at quarters occupied by the claimant within the United States that were not assigned to him or otherwise provided in kind by the United States; or

(3) it was not caused wholly or partly by the negligent or wrongful act of the claimant, his agent, or his employee.

(e) For the purposes of subsection (d) (1), the dates of beginning and ending of an armed conflict are the dates established by concurrent resolution of Congress or by a determination of the President.

(f) The Secretary of Defense and the Secretary of each military department shall report once a year to Congress on claims settled under this section during the period covered by the report. The report shall include for each claim the name of the claimant, the amount claimed, and the amount paid.

**§ 2733. Property loss; personal injury or death: incident to non-combat activities of Department of Army, Navy, or Air Force**

(a) Under such regulations as the Secretary of a military department may prescribe, he or, subject to appeal to him, any officer designated by him may settle, and pay in an amount not more than \$1,000, a claim against the United States for—

(1) damage to, or loss of, real property, including damage or loss incident to use and occupancy;

(2) damage to, or loss of, personal property, including property bailed to the United States and including registered or insured mail damaged, lost, or destroyed by a criminal act while in the possession of the Army, Navy, Air Force, or Marine Corps, as the case may be; or

(3) personal injury or death;

either caused by a civilian officer or employee of that department, or a member of the Army, Navy, Air Force, or Marine Corps, as the case may be, acting within the scope of his employment, or otherwise incident to noncombat activities of that department.

(b) A claim may be allowed under subsection (a) only if—

(1) it is presented in writing within one year after it accrues; except that if the claim accrues in time of war or a war intervenes within one year after it accrues, and if good cause is shown, the claim may be presented not later than one year after the war is terminated;

(2) it is not covered by section 2734 of this title or section 2672 of title 28;

(3) it is not for personal injury or death of such a member or civilian officer or employee whose injury or death is incident to his service;

(4) the damage to, or loss of, property, or the personal injury or death, was not caused wholly or partly by a negligent or wrongful act of the claimant, his agent, or his employee; and

(5) it is substantiated as prescribed in regulations of the Secretary concerned.

(c) A claim for personal injury or death under subsection (a) may not be allowed for more than the cost of reasonable medical, hospital, and burial expenses actually incurred, and not otherwise furnished or paid by the United States.

(d) The Secretary of the military department concerned may report a claim for more than \$1,000 that would otherwise be covered by this section to Congress for its consideration.

(e) No claim may be paid under subsection (a) unless the amount tendered is accepted by the claimant in full satisfaction.

(f) For the purposes of this section, a member of the Coast and Geodetic Survey or of the Public Health Service who is serving with the Navy or Marine Corps shall be treated as if he were a member of that armed force.

**§ 2734. Property loss; personal injury or death: incident to non-combat activities of Department of Army, Navy, or Air Force; foreign countries**

(a) To promote and maintain friendly relations through the prompt settlement of meritorious claims arising in foreign countries, the Secretary of a military department or any officer designated by him may, under such regulations as the Secretary may prescribe, appoint one or more claims commissions, each composed of one or more commissioned officers of the armed forces under his jurisdiction, to settle and pay any claim for not more than \$5,000, for—

(1) damage to, or loss of, real property of any foreign country or of any political subdivision or inhabitant of that country, including damage or loss incident to use and occupancy;

(2) damage to, or loss of, personal property of any foreign country or of any political subdivision or inhabitant of that country, including property bailed to the United States; or

(3) personal injury to, or death of, any inhabitant of a foreign country;

if the damage, loss, personal injury, or death occurs in that country and is caused by, or is otherwise incident to noncombat activities of, the armed forces under his jurisdiction, or is caused by a member thereof or by a civilian employee of the department concerned. The claim of an insured, but not that of a subrogee, may be considered under this subsection. In this section, "foreign country" includes any place under the jurisdiction of the United States in a foreign country.

(b) A claim may be allowed under subsection (a) only if—

(1) it is presented within one year after it accrues;

(2) in the case of a national of a country at war with the United States, or of any ally of that country, the claimant is determined by the commission or by the local military commander to be friendly to the United States; and



(3) it did not arise from action by an enemy or result directly or indirectly from an act of the armed forces of the United States in combat.

(c) Allowance of a claim for more than \$2,500 under subsection (a) may, by regulation, be made subject to the approval of any commissioned officer designated by the Secretary of the military department concerned.

(d) The Secretary of the military department concerned may certify to Congress any claim for more than \$5,000 that would otherwise be covered by this section in the amount that he considers just and reasonable, as a legal claim for payment from appropriations made by Congress therefor, together with a brief statement of the claim, the amount claimed, and the amount allowed.

(e) No claim may be paid under subsection (a) unless the amount tendered is accepted in full satisfaction.

(f) In time of war and upon the request of a military department, a claim arising in that department and covered by subsection (a) may be settled and paid by a commission appointed under subsection (a) and composed of officers of an armed force under the jurisdiction of another military department.

(g) A claim against the Coast Guard may be settled or paid under this section only if it arises and is settled and paid while the Coast Guard is operating as a service in the Navy. Officers of the Coast Guard may serve on claims commissions, or as officers to approve settlements made by such a commission, only for claims against the Coast Guard. Payment of such claims shall be made out of the appropriation for the operating expenses of the Coast Guard.

#### **§ 2735. Settlement: final and conclusive**

Notwithstanding any other provision of law, the settlement of a claim under section 2732, 2733, or 2734 of this title is final and conclusive.

### **CHAPTER 165.—ACCOUNTABILITY AND RESPONSIBILITY**

Sec.

2771. Final settlement of accounts: deceased members.

2772. Withholding pay of officers.

#### **§ 2771. Final settlement of accounts: deceased members**

(a) In the settlement of the accounts of a deceased member of the Army, Navy, Air Force, or Marine Corps, if a demand is not made by his legal representative, the General Accounting Office may allow any amount due, to the person highest on the following list living on the date of settlement:

(1) Surviving spouse.

(2) Children and their issue, per stirpes.

(3) Father and mother in equal parts or, if either is dead, the survivor.

(4) Brothers and sisters, and their children, per stirpes.

(b) Reimbursement for funeral expenses may be made from the amount due the decedent's estate, if the person who paid the expenses presents a claim for them before settlement by the General Accounting Office.

**§ 2772. Withholding pay of officers**

The pay of an officer of the Army, Navy, Air Force, or Marine Corps may be withheld, under section 82 of title 5, only for an indebtedness to the United States admitted by the officer or shown by the judgment of a court, or upon a special order issued in the discretion of the Secretary of the military department concerned.

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